

STATE OF CONNECTICUT
FREEDOM OF INFORMATION COMMISSION

In the matter of:

Kathryn Zandri,

Complainant

against

Docket # FIC 2020-0109

Chairman, Town Council, Town of Prospect;
Town Council, Town of Prospect; and Town of
Prospect,

Respondents

December 15, 2020

**RESPONDENTS' PRE-HEARING WITNESS LIST, EXHIBIT LIST,
EXHIBITS AND MEMORANDUM OF LAW**

Respondents hereby reserve the right to call the following witnesses and introduce the following evidence at the hearing scheduled before the Commission on December 18, 2020 at 2:00 p.m.

I. WITNESSES

- Jeffrey Slapikas, Chair, Prospect Town Council
- Robert Chatfield, Mayor, Town of Prospect

II. EXHIBITS

- May 19, 2020 Letter from Town Attorney to Kathryn Zandri (PROSPECT 003)
- May 4, 2020 Approved Minutes from Prospect Town Council Meeting (PROSPECT 004—008)

Respondents have also submitted a Pre-Hearing Memorandum of Law herewith.
(PROSPECT 009—013)

Dated: December 15, 2020

RESPONDENTS,


By: 

David S. Hardy
Carmody Torrance Sandak & Hennessey LLP
195 Church Street
P.O. Box 1950
New Haven, CT 06509
Phone: 203-777-5501
Fax: 203-784-3199
dhardy@carmodylaw.com

CERTIFICATION OF SERVICE

I certify that a copy of Respondents' Pre-Hearing Exhibit List, Witness List, Exhibits and Memorandum of Law were emailed on December 15, 2020 to the following self-represented party of record:

Kathryn F. Zandri
271 Sycamore Drive
Prospect, CT 06712
kzgz3759@gmail.com



David S. Hardy

May 19, 2020

Via First Class Mail and Email (Kzz3759@gmail.com)

Ms. Kathryn F. Zandri
271 Sycamore Drive
Prospect, CT 06712

**Re: Freedom of Information Complaint
#FIC 2020-0109**

Dear Ms. Zandri:

I am the Town Attorney for the Town of Prospect. I am writing to acknowledge the issues you have raised in your complaint to the Freedom of Information Commission concerning Town Council meetings that occurred on January 17, January 21 and February 4, 2020. You have accurately noted deficiencies in the minute keeping for these meetings, and you have raised worthwhile concerns about the agendas for these meetings. Based on my inquiries, I understand that in each meeting in question, Chairman Slapikas did in fact take a motion and a vote to move into executive session, and took a motion and a vote to move out of executive session. He also stated that no votes were taken following the executive sessions. However, you have correctly pointed out that the minutes of these meetings did not reflect these actions and statements. Please be advised that Chairman Slapikas publicly acknowledged these deficiencies at the May 4, 2020 Town Council meeting, and that the Town is taking steps to avoid recurrence of these issues. Going forward the Town will also carefully review the agenda descriptions of the matters requiring executive session. We thank you for bringing these matters to our attention. Please do not hesitate to contact me if you should have any questions, or if any related issues may arise in the future.

Very truly yours,

David S. Hardy

David S. Hardy

cc: Mr. Thomas A. Hennick, Freedom of Information Commission
Hon. Robert Chatfield, Mayor
Mr. Jeff Slapikas, Town Council Chair

REC'D & FILED

MAY 29 2020

Freedom of Information Comm.
BY: *HP*

*FIC 2020-0109
OHB:TAH*

Prospect Town Council
Budget Workshop
Approved Minutes
May 4, 2020

Chairman Slapikas called to order the Virtual Budget Workshop of the Prospect Town Council @ 5:10 p.m. The meeting began with the Pledge of Allegiance.

Attending:

A roll call for attendance was taken by Chairman Slapikas.

Via Online: P. Murray, T. Graveline, S. Pilat, R. Blanc, P. Geary, L. Fitzgerald, M. Patchkofsky & S. Lusas Kolodziej

Also, in Attendance via Phone: Mayor Robert J. Chatfield

There were additional callers online that could view and listen.

Benefits Town Employees: \$766,763

Mayor Chatfield requested to change line item #6200-01 Medical Benefits from \$531,085 to \$503,000 and to change line item #6200-04 MERFB (Union Emp to 14.95%). The Mayor advised that line item #6200-04 should also be increased to \$85,063. The Mayor explained that the percentage had increased to 14.95% for MERS. P. Geary commented that originally this plan was thought to be good for the employees but as time went on, the percentage increased and it may be time to look at other options for the future. A call for a motion for discussion was made. **Motion** made by S. Lusas Kolodziej, seconded by M. Patchkofsky to approve for discussion the category of BTE #6200 in the amount of \$766,763. Disc. A request was made to eliminate from line item #6200-04 MERFB (14.95%) to #6200-04 MERFB (PW) as increases could occur in the future. A call was made to amend the original motion. **Motion** made by S. Lusas Kolodziej, seconded by M. Patchkofsky to amend the original motion and to change #6200-04 MERFB (14.95%) to #6200-04 MERFB (PW). Discussion was held on #6200-00 Vacation & Holiday to Temp. Staff Coverage. After discussion, **Motion** made by S. Lusas Kolodziej, seconded by M. Patchkofsky to amend and apply a name change to the motion for #6200-00 Vacation & Holiday to Substitute Staff. Council members recommended to request to discuss at Union negotiations, changes to the % that the Town pays. Disc. A rollcall vote was taken. **9 Approved/** J. Slapikas, M. Patchkofsky, P. Murray, T. Graveline, R. Blanc, S. Lusas Kolodziej, P. Geary, S. Pilat, L. Fitzgerald. **Opposed/None Motion passes.**

Treasurer #5400: \$10,000

Motion made by R. Blanc, seconded by M. Patchkofsky to approve the Budget of Treasurer #5400 in the amount of \$10,000. Discussion. P. Geary and T. Graveline requested a more detailed job description for this position. A rollcall vote was taken. **9 Approved/** J. Slapikas, M. Patchkofsky, P. Murray, T. Graveline, R. Blanc, S. Lusas Kolodziej, P. Geary, S. Pilat, L. Fitzgerald **Opposed/None Motion carries.**

Office of the Mayor #5000: \$276,268

Motion made by S. Lusas Kolodziej, seconded by P. Murray to approve for discussion of the Budget of Office of the Mayor in the amount of \$276,268. The Mayor requested to change line item #5000-08 to \$7,130 from \$4,130. The Council continued with discussion on line item #5000-04 Clerical Assts. PT3. Questions were raised as to the number of part time personnel in the Mayor's Office, hours and pay rate. P. Murray also commented on line item #5000-09 Payroll Service and questioned if the Mayor would be inviting those chosen to the Council for preliminary discussions. Disc. The Mayor continued that he had discussions with several Payroll Services on items to be included W2's and quarterlies and Direct Deposit may need to be negotiated. The Mayor stated that after speaking with several, he had chosen two (2) vendors. P. Murray stated that it would be good to have a presentation to the Council by the two (2) representatives. Disc. The Mayor listed the hours for the part time employees: 16 hours @ \$19.01; 13 hours @ \$26.51 and 14 hours @ \$19.00. Chairman Slapikas advised that the total for the three (3) part time employees equaled \$47,959.08. Disc. **Motion** made by S. Lusas Kolodziej to table the category of Office of the Mayor #5000 until tomorrow evening's meeting, 5/5/2020. Chairman Slapikas asked Mayor Chatfield if there would be anything else and at this time the Mayor stated no and asked to be excused as he had a lot of work to do. The Mayor left the meeting.

A handout was emailed to the Council from M. Patchkofsky with recommendations for Budget cuts as printed on 4/29/2020 (Schedule A).

#5100 ZBA: \$2,225

A review of the Budget for ZBA was made.

Motion made by P. Geary, seconded by T. Graveline to change line item #5100-02 Training from \$25 to 0 and to change line item #5100-03 Conferences from \$400 to \$200 for a total balance of \$2,000 from \$2,225. A roll call vote was taken.

9 Approved/J. Slapikas, M. Patchkofsky, P. Murray, T. Graveline, R. Blanc, S. Lusas Kolodziej, P. Geary, S. Pilat and L. Fitzgerald. **Opposed/None Motion carries.**

#5300 Board of Assessment Appeals: \$750.

Motion made by T. Graveline, seconded by R. Blanc to approve the Budget of Board of Assessment Appeals #5300 for a total of \$750. Disc. M. Patchkofsky commented that the meeting clerk worked 4 meetings the previous year @ \$85.00 per meeting and recommended to change the line item to \$400 with a reduction of \$350 from \$750. Disc. **Motion** made by T. Graveline, seconded by R. Blanc to amend the motion and reduce line item #5300-00 Meeting Clerk (Reval) to \$400 from \$750. Disc. A rollcall vote was taken. **9 Approved/J. Slapikas, M. Patchkofsky, P. Murray, T. Graveline, R. Blanc, S. Lusas Kolodziej, P. Geary, S. Pilat and L. Fitzgerald. Opposed/None Motion carries.**

#5600 Planning & Zoning Commission: \$8,150

Motion made by R. Blanc, seconded by M. Patchkofsky to approve the Budget of Planning & Zoning Commission #5600 in the amount of \$8,150. Disc. A recommendation was made to reduce #5600-02 Supplies from \$200 to 0; a request was also made to reduce #5600-03 Meetings & Seminars from \$450 to \$200 as all seminars had been cancelled due to COVID-19. Disc. Council members also requested to reduce line item #5600-00 Engineer from \$2,500 to \$1,500 (-\$1,000), for a new bottom line total of \$6,700. A rollcall vote was taken. **9 Approved/J. Slapikas, M. Patchkofsky, P. Murray, T. Graveline, R. Blanc, S. Lusas Kolodziej, P. Geary, S. Pilat and L. Fitzgerald. Opposed/None Motion carries.**

#5800 Auto Process of Records: \$90,000

Motion made by P. Geary, seconded by S. Lusas Kolodziej to approve the Budget of Auto Process of Records #5800 in the amount of \$90,000. Disc. The Mayor explained what this category is as to contracts for vendors including printing of tax bills and rate books. Council members recommended reducing #5800-00 Contracts to \$70,000 from \$75,000 (-\$5,000). Council members recommended reducing line item #5800-01 Technology Updates in the amount of \$15,000 to 0 as this category would be moved. The Council also recommended a new line item of #5800-02 with no heading at this time. T. Graveline recommended breaking out each department for their printing needs. Disc. **Motion** made by S. Lusas Kolodziej, seconded by P. Murray to amend the motion for Auto Process of Records #5800 from \$90,000 to \$70,000 for a bottom-line total of \$70,000 and to add line item #5800-02 with no heading for future access. A rollcall vote was taken. **9 Approved/J. Slapikas, M. Patchkofsky, P. Murray, T. Graveline, R. Blanc, S. Lusas Kolodziej, P. Geary, S. Pilat and L. Fitzgerald. Opposed/None Motion carries.**

#5850 Building Department: \$84,600.

Motion made by R. Blanc, seconded by P. Murray to approve the Budget of the Building Department #5850 in the amount of \$84,600. Disc. Council members recommended to reduce line item #5850-02 Supplies/Dues/Conf from \$2,575 to \$2,000 (-\$575) for a bottom-line total of \$76,043. A rollcall vote was taken. **9 Approved/J. Slapikas, M. Patchkofsky, P. Murray, T. Graveline, R. Blanc, S. Lusas Kolodziej, P. Geary, S. Pilat and L. Fitzgerald. Opposed/None Motion carries.** The Council thanked M. Patchkofsky for taking the time to make the listing of recommended budget cuts. T. Graveline requested that a copy of the Budget be given to all Chairmen and members of the Boards and Commissions along with a letter from the Council. T. Graveline advised that the Boards and Commissions should be made aware of how to access the CC-M website for any meetings and seminars. Disc.

#5950 Municipal Organizational Fees: \$11,565

Motion made by P. Geary, seconded by T. Graveline to approve the Budget of Municipal Organizational Fees #5950 in the amount of \$11,565. Disc. Council members recommended to reduce line item #5950-02 COST from \$1,075 to \$825 (-\$250) for a new bottom-line total of \$11,315. A roll call vote was taken. **9 Approved/J. Slapikas, M. Patchkofsky, P. Murray, T. Graveline, R. Blanc, S. Lusas Kolodziej, P. Geary, S. Pilat and L. Fitzgerald. Opposed/None Motion carries.**

#6050 Town Council: \$15,999

Motion made by P. Geary, seconded by T. Graveline to approve the Budget of Town Council #6050 in the amount of \$15,999. Disc. A recommendation was made to reduce the line item of #6050-02 Conferences to 0 from \$500 (-\$500) for a new bottom-line total of \$15,499. Disc. Council members requested of the Chairman to contact CC-M with their new email addresses for future correspondence from CC-M. A roll call vote was taken. **9 Approved/J. Slapikas, M. Patchkofsky, P. Murray, T. Graveline, R. Blanc, S. Lusas Kolodziej, P. Geary, S. Pilat and L. Fitzgerald. Opposed/None Motion carries.**

#6100 Town Buildings: \$649,000

Motion made by P. Murray, seconded by P. Geary to approve the Budget of Town Buildings #6100 in the amount of \$649,000. Disc. A recommendation was made to reduce \$6100-00 Maintenance/Salaries from \$70,000 to \$67,633 (-\$2,367). The Mayor explained that numerous times transfers were made into this line item. The Council discussed line item #6100-06 Painting and Flooring in the amount of \$7,500 and suggested to reduce to \$5,000. The Mayor advised that he would be putting new carpeting in several Town Buildings. M. Patchkofsky commented to save the Taxpayers money, put monies toward next year and re-evaluate next year. Disc. The Council recommended to reduce line item #6100-01 electricity 26 Meters to \$108,000 from \$115,000 (-\$7,000) and also line item #6100-07 Cont. Maintenance from \$120,000 to \$110,000 (-\$10,000) for a new bottom-line total of \$629,633. P. Geary commented on line item #6100-03 Heating and the heat at the Community Center, as the building has various areas of being too hot at times. Disc. The Council also commented flooring and suggested that they would support other types of flooring other than carpeting. Chairman Slapikas commented that he would approve the amount of \$7,500 #6100-06 Painting & Flooring if other

types of flooring were considered. Disc. **Motion** made by P. Murray, seconded by P. Geary to approve the amendments made for the Budget of Town Buildings #6100 for a new bottom-line total of \$629,633. A roll call vote was taken. **9 Approved/J. Slapikas, M. Patchkofsky, P. Murray, T. Graveline, R. Blanc, S. Lusas Kolodziej, P. Geary, S. Pilat and L. Fitzgerald. Opposed/None Motion carries.**

#6400 Inland Wetlands: \$3,550

Motion made by S. Lusas Kolodziej, seconded by P. Murray to approve the Budget of Inland Wetlands in the amount of \$3,550. Disc. A recommendation was made to reduce line item #6400-02 Conferences from \$400 to \$200 (-\$200) for a new bottom-line total of \$3,350. Comments were made as to the Meeting Clerk's salary #6400-00 as it had been discussed in prior meetings. The Mayor advised to leave as is and he would discuss with the Land Use Inspector as to the clerk's duties. A roll call vote was taken. **9 Approved/J. Slapikas, M. Patchkofsky, P. Murray, T. Graveline, R. Blanc, S. Lusas Kolodziej, P. Geary, S. Pilat and L. Fitzgerald. Opposed/None Motion carries.**

#6800 Emergency Management: \$4,930

Motion made by T. Graveline, seconded by P. Geary to approve a reduction in the Budget of Emergency Management for line item #6800-00 Equipment/Shelter from \$2,900 to \$1,000 (-\$1,900) for a new bottom line total of \$3,030 from \$4,930. Disc. The Mayor advised that he will be moving the Emergency Management center from the Fire House to the Community Center. T. Graveline questioned the number of cots, the Mayor stated that he will be obtaining 150 new cots, that may not cost the Town any monies. Disc. A roll call vote was taken. **Opposed/J. Slapikas, M. Patchkofsky, P. Geary, T. Graveline, R. Blanc, P. Murray, S. Pilat, L. Fitzgerald, S. Lusas Kolodziej Approved/None.** The line item #6800-00 Equipment/Shelter remains at \$2,900 and the bottom-line total remains @ \$4,930.

#7550 Health: \$307,472

Motion made by R. Blanc, seconded by P. Murray to approve the reduction to line item #7550-01 VNA from \$5,000 to \$2,500 for a new bottom-line total of \$306,810.

Disc. The Mayor stated that at this time a bill from the VNA had not been received. A roll call vote was taken. **9 Approved/J. Slapikas, M. Patchkofsky, P. Murray, T. Graveline, R. Blanc, S. Lusas Kolodziej, P. Geary, S. Pilat and L. Fitzgerald. Opposed/None Motion carries.**

#7750 Contingency: \$50,000

Motion made by P. Geary, seconded by R. Blanc to approve the Budget of Contingency in the amount of \$50,000. Disc.

Council members suggested to reduce line item #7750-02 Evictions to \$500 from \$1,000. Disc. The Mayor advised to leave the amount of \$1,000 in this line item of #7750-02 Evictions as \$400.00 had been spent by January and more notices had come in.

Disc. A roll call vote was taken. **Opposed/J. Slapikas, M. Patchkofsky, P. Geary, T. Graveline, R. Blanc, P. Murray, S. Pilat, L. Fitzgerald, S. Lusas Kolodziej. Approved/None Motion fails. Disc.**

Motion made by S. Lusas Kolodziej, seconded by L. Fitzgerald to approve an increase to line item #7750-02 Evictions to \$2,000 from \$1,000. A roll call vote was taken. **Opposed/J. Slapikas, M. Patchkofsky, P. Geary, T. Graveline, R. Blanc, S. Pilat 3 Approved/ P. Murray, S. Lusas Kolodziej, L. Fitzgerald Motion fails the total for line item #7750-02 Evictions remains @ \$1,000.**

#7850 Truck Lease: 171,562

Motion made by T. Graveline, seconded by P. Murray to reduce line item #7850-04 Dump Truck PWD 19 in the amount of \$38,169 for a new bottom line total of \$133,393. Disc. The Mayor commented that the lease payment for line item #7850-04 Dump Truck PWD 19 would be paid on 8/15/2020. The next payment for line item #7850-05 would be paid in August 2021. Disc. Council members questioned surplus. The Mayor stated that he would not know if there would be a surplus until the end of June 2020. Council members suggested that if there was a surplus by the end of June 2020 to put money into Capital Non-Recurring for next year, but if the Mayor could find extra monies this account could be paid this year. A vote was taken on monies out of Truck Lease from surplus. **Opposed/J. Slapikas, M. Patchkofsky, P. Geary, T. Graveline, R. Blanc, P. Murray, S. Pilat, L. Fitzgerald, S. Lusas Kolodziej Approved/None.** #7850-04 Dump Truck PWD 19 stays; The Mayor will review if there is a surplus come June for monies to be said for next year.

#8000 Storm Water: \$37,000

A request was made to reduce line item #8000-00 Storm Water SM from \$25,000 to \$21,000 (-\$4,000). **Motion** made by S. Lusas Kolodziej to table this line item.

Chairman Slapikas advised that he had correspondence left to discuss. The Council thanked M. Patchkofsky for putting together the Budget cuts list. At this time, the Mayor thanked everyone and left the meeting.

Chairman Slapikas read into the record the email received and dated 5/1/2020 from Tom Galvin, 27 Rockridge Terrace, (Schedule B) regarding the breach in the payroll account, the position of a Financial Director and other budget related questions listed:

'Other Budget Related Questions:

1. Rather than sifting through all the multiple individual components, for 2020-2021 will the Mayor's 'all in' annual compensation remains at the previously reported \$130,000+ level?
2. Assuming that at least some of the 'Budget Management & Reporting' functions historically performed by the Mayor (and others) may be absorbed by the 'new' position (if approved) will the Mayor's salary (and others) be reduced proportionately?
3. I understand that unlike the 2019-2020 Budget year, there is not a local election this coming November, but will you continue to aggressively use the surplus in the General Fund and anticipated revenue from 'Police Overtime' to reduce the tax burden on Prospect taxpayers?
4. Speaking to the positive balance in the General Fund, can the 'Administration' provide the residents defining the various 'sources' of that surplus including: a) taxes collected but not spent as budgeted, b) borrowed / bonded money not spent in prior years, c) unanticipated revenues / rebates (Region 16 surplus, state, town fees, sale of town assets, etc), d) miscellaneous / other?
5. How is this budget reflecting / addressing the 'unfunded liability' related to Town Employee Post-Employment Benefits that was identified last year by the outside auditors and initially estimated to be 'about' \$650,000?
6. I understand that Region 16 notified the town that it could 'retain' approximately \$177,000 of the Regions 2019-2020 appropriation, and that the town would utilize that 'windfall' to reduce what is possibly a \$1.5m increase in the Prospect Share of the 2020-2021 Education Budget. As Prospect had previously 'retained' upwards of \$1.0m of Region 16 appropriations over recent years, will those funds, that were never returned to, or used to offset Region 16 expenses, also be used to reduce the overall financial burden on Prospect's taxpayers?
7. Given the scope of [human] errors that were openly acknowledged in mid-2017, dating back as far as the 2014-2015 budget year, the current problems, such as 'no one balancing bank statements', and the discovery of various 'procedural irregularities' with several earlier audits, will the 2020-2021 budget include sufficient funding to support a thorough 'forensic' type audit going back a minimum of 5-6 years?
8. For all requested line item budget amounts are greater than \$5,000, and represent the purchase of goods or services that will be provided by outside vendors or individuals, will the Town's Purchasing Policy requiring competitive bidding be strictly adhered to this 2020-2021 budget year?

As I'm sure you appreciate, the [hopefully] once in a lifetime crisis that now negatively impacts essentially everyone, including for many, significant financial impacts, I'm also hopeful that the Town Council will do whatever is necessary to at least maintain the mil rate level at last year's number of 30.95. As always, I thank you and the Town Council for your collective efforts during these unusually difficult times and look forward to your inclusion of these issues into your ongoing budget discussions / decisions and for the timely providing of all requested information. Please let me know if you have any questions or require any clarifications.

Best Regards, and Stay Healthy,

Thomas J. Galvin

Thomas J. Galvin
27 Rockridge Terrace
Prospect, CT 06712'

Chairman Slapikas commented that this letter will also be read at the regular meeting of the Prospect Town Council on 5-5-2020.

Chairman Slapikas advised that there was an Executive Session held on 1/17/2020, at the Prospect Town Hall. The meeting was held upstairs. The Agenda read to invite Mayor Chatfield and the Town's Attorney to Attend, Re: Executive Session for Pending Litigation and Related Strategies. The session was to update the members of the Council on the payroll breach. Chairman Slapikas apologized to the Council that he was not aware and did not post

minutes. Chairman Slapikas stated that another Executive Session was held on 1/21/2020 to inform any Council member that was not present at the 1/17/2020 meeting. The minutes of 1/21/2020 noted in the last paragraph before the Adjournment read 'The meeting convened to an Executive Session @ 7:55 p.m. The regular meeting reconvened @ 8:09 p.m. No motions were made or votes taken.' Chairman Slapikas stated that this information was incorrect and should state: an Executive Session all attending members should be named, who was invited, what the Executive Session was about, motions and adjournment. This Executive Session was held at the end of the meeting so that all attending audience members could leave and did not need to wait for the Council to reconvene. An FOI complaint was filed by Mrs. Kathryn Zandri, Docket #F2019. Chairman Slapikas commented that he did not like the way this was handled and apologized to the Council and stated that it is now in the hands of the Town's Attorney and the Town's Attorney will deal with the State of Connecticut. Chairman Slapikas commented that the letter from T. Galvin will be read again at the regular meeting of the Town Council on 5/5/2020. P. Geary questioned if the Council would respond to T. Galvin to which Chairman Slapikas commented that the Mayor will be answering the questions. L. Fitzgerald commented that mistakes happen and Chairman Slapikas was doing a good job. T. Graveline commented that she did not feel that the FOI complaint was malicious, but appreciated Chairman Slapikas' work on the Council. Chairman Slapikas also thanked the clerk of the Council.

Chairman Slapikas acknowledged one caller on the line and asked to state their name and address to which no one replied.

Adjournment:

Motion made by S. Lusas Kolodziej, seconded by P. Murray to adjourn the meeting. **Unanimous.** The meeting adjourned @ 9:53 p.m.

Jeff Slapikas
Town Council Chairman

STATE OF CONNECTICUT
FREEDOM OF INFORMATION COMMISSION

In the matter of:

Kathryn Zandri,

Complainant

against

Docket # FIC 2020-0109

Chairman, Town Council, Town of Prospect;
Town Council, Town of Prospect; and Town of
Prospect,

Respondents

December 15, 2020

PRE-HEARING MEMORANDUM OF LAW
IN OPPOSITION TO COMPLAINANT'S APPEAL

I. INTRODUCTION

Respondents (collectively, the "Town") respectfully submit that the appeal filed in this matter should be dismissed, or, alternatively, disposed of without penalty. The Complainant alleges violations of Conn. Gen. Stat. §§ 1-225(a) and 1-225(f) connected with Prospect Town Council meetings that occurred on January 17, 2020, January 21, 2020, and February 4, 2020. The Commission should dismiss this appeal because it seeks no specific relief against the Town, but to the extent that a request for relief is implied, none should be granted because: (1) the alleged deficiencies associated with the January 17, 2020 and January 21, 2020 Town Council meetings are time-barred and (2) the Town has already publicly acknowledged deficiencies with respect to the January 17, 2020, January 21, 2020, and February 4, 2020 meetings and taken steps to avoid such deficiencies in the future.

II. RELEVANT STATUTES

Connecticut General Statutes § 1-225 provides:

(a) The meetings of all public agencies, except executive sessions, as defined in subdivision (6) of section 1-200, shall be open to the public. The votes of each member of any such public agency upon any issue before such public agency shall be reduced to writing and made available for public inspection within forty-eight hours and shall also be recorded in the minutes of the session at which taken. Not later than seven days after the date of the session to which such minutes refer, such minutes shall be available for public inspection and posted on such public agency's Internet web site, if available, except that no public agency of a political subdivision of the state shall be required to post such minutes on an Internet web site. Each public agency shall make, keep and maintain a record of the proceedings of its meetings.

...

(f) A public agency may hold an executive session, as defined in subdivision (6) of section 1-200, upon an affirmative vote of two-thirds of the members of such body present and voting, taken at a public meeting and stating the reasons for such executive session, as defined in section 1-200.

Connecticut General Statutes § 1-200(6) defines executive sessions in relevant part as “a meeting of a public agency at which the public is excluded for one or more of the following purposes...(B) strategy and negotiations with respect to pending claims or pending litigation to which the public agency ... is a party until such litigation or claim has been finally adjudicated or otherwise settled...”

In summary, section 1-225 of the General Statutes requires public agencies to reduce to writing a public record of the vote of each of its members—including a record of a vote to enter an executive session—to include that information in the minutes, to state the reasons for entering an executive session, and to make the minutes available to the public within seven days of the meeting.

Connecticut General Statutes § 1-206 creates a remedy for members of the public who are denied their rights under the Freedom of Information Act, Conn. Gen. Stat. § 1-200, *et seq.*

Section 1-206 provides in relevant part:

(b)(1) Any person denied the right to inspect or copy records under section 1-210 or wrongfully denied the right to attend any meeting of a public agency or denied any other right conferred by the Freedom of Information Act¹ may appeal therefrom to the Freedom of Information Commission, by filing a notice of appeal with said commission. *A notice of appeal shall be filed not later than thirty days after such denial. . . .* For purposes of this subsection, such notice of appeal shall be deemed to be filed on the date it is received by said commission or on the date it is postmarked, if received more than thirty days after the date of the denial from which such appeal is taken.

(Emphasis added).

III. ARGUMENT

The Commission should dismiss the appeal in its entirety because it seeks no relief against the Town, but in the event a request for relief is implied in the appeal none is warranted. First, the Commission should dismiss the allegations arising out of the January 17, 2020 and January 21, 2020 meetings because they are time-barred under Connecticut General Statutes § 1-206(b)(1). Complainant alleges violations of Sections 1-225(a) and 1-225(f) for failure to record a vote of the members to enter and exit executive session, failure to adequately describe the business conducted in executive session, failure to post the January 17, 2020 minutes, and failure to list who was in attendance at the January 21, 2020 meeting. Section 1-225(a) requires the minutes to be available within seven days of the meetings. Therefore, the alleged denials of rights occurred on January 24, 2020 and January 28, 2020 when the deadlines for the Commission to make available for the public passed. Section 1-206(b)(1) requires that Complainant file an appeal with the Commission within thirty days of a denial of her rights. The

¹ C.G.S.A. § 1-200 *et seq.*

Commission received the Complaint on March 2, 2020, thirty-nine and thirty-five days, respectively, after the Complainant's rights were denied.² Because the Commission received the Complaint more than thirty days after the denials, it lacks jurisdiction to hear the appeal on those claims and they should be dismissed. *See Joe Wojtas and The Day v. Superintendent of Schools, Stonington Public Schools*, FIC 2019-0474 (dismissing complaint for lack of jurisdiction); *Robert J. LaBonte v. Town Manager, Town of Wethersfield*, FIC 2003-213 (dismissing complaint for lack of jurisdiction); *Phylis B. Bernard v. Norfolk Botelle School Building Committee*, FIC 94-249 (dismissing complaint for lack of jurisdiction).

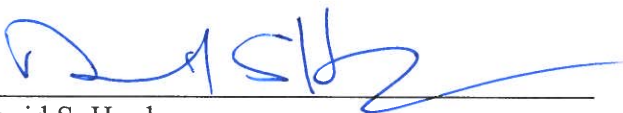
Second, although the Complainant's appeal concerning the February 4, 2020 meeting is timely, none of the deficiencies alleged by the Complainant -whether time-barred or not - warrant the imposition of a penalty against the Town. Although the Commission has discretion under Section 1-206(b)(2) to impose civil penalties, it need not when, in cases like this, the deficiencies were minor, the Respondents have publicly acknowledged the deficiencies, and the Respondents have taken steps to ensure future compliance. *See e.g. DeRoehn v. Chief, Morris Fire Company*, FIC 2019-0180 (no penalty levied where the respondents failed to make and maintain a record of votes for all membership votes at a meeting), *Doyle v. Board of Education, City of Bristol*, FIC 2002-072, (declining to levy a civil penalty when the Respondent, following a violation, issued a memorandum to all staff to take care to comply with the seven-day posting requirement under the Act). The case of *Wright v. First Selectman, Town of Windham*, FIC 1990-048, cited by the Complainant, similarly demonstrates that penalties should not be imposed where the respondent takes steps to ensure compliance with executive session requirements going forward.

² The record in this matter contains no evidence of the date that the appeal was postmarked.

IV. CONCLUSION

The Town has publicly acknowledged deficiencies in record keeping for the subject meetings and has taken steps to avoid similar missteps in the future. The Town therefore respectfully requests that the Commission refrain from entering any relief or penalties against it in this matter.

RESPONDENTS,

By: 

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