TOWN OF STOUGHTON

Massachusetts
MA 02072

Stoughton Town Hall
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Planning Board
Joseph Scardino, Chairman
Daniel Kelly, Vice Chairman
Jonathan Garland
Senesie Kabba
Paul Demusz

John Charbonneau, Town Planner

PLANNING BOARD
MEETING MINUTES
Thursday, June 24, 2021

The Stoughton Planning Board met on Thursday, June 24, 2021 at 7:00 p.m. by remote participation pursuant to Governor Baker’s March 12, 2020 Order Suspending Certain Provisions of the Open Meeting Law M.L.L. Ch. 30A, Section 18 and the Governor’s March 23, 2020 Order imposing strict limitations on the number of people who may gather in one place.

The following members were present:
Joseph Scardino, Chairman
Daniel Kelly
Senesie Kabba
Paul Demusz

Also present were: John Charbonneau, Town Planner; Karen Lawlor, Recording Secretary.

The Planning Board meeting was called to order at 7:00 p.m.

Motion by Mr. Kelly to open the public meeting, seconded by Mr. Demusz. Roll call taken, All in favor, Mr. Demusz, Mr. Kelly, Mr. Kabba, Chairman Scardino, Approved 4-0-0.

Motion by Mr. Kelly to open Item #1, Chairman’s Comments, seconded by Mr. Demusz. Roll call taken, All in favor, Motion Approved 4-0-0.

Item #1. Chairman’s Comments.

Chairman Scardino welcomed everyone to the Planning Board June 24, 2021 meeting, and explained that this meeting is being recorded by video and audio by SMAC for future broadcast, so everyone should guide their actions accordingly.
Chairman Scardino discussed the summer schedule and we will be meeting virtually on July 22 and August 12, 2021. He referred to a letter from the Attorney General regarding an open meeting violation to an executive session that was held on August 25, 2020. He read the letter into the record dated June 15, 2021 addressed to Forrest Lindwall, Chair, Stoughton Redevelopment Authority, and Joseph Charbonneau, Stoughton Town Planner - RE: Open Meeting Law Complaints.

"Dear Mr. Lindwall and Mr. Charbonneau: This office received two complaints from Joseph Mokrisky on November 6, 2020, alleging that the Stoughton Redevelopment Authority (the "Authority") and the Stoughton Planning Board (the "Board") violated the Open Meeting Law, G.L. c. 30A, §§ 18-25.1 The complaints were originally filed with the Authority and the Board on August 31 and Authority Chair Forrest Lindwall responded, on behalf of the Authority, by letter dated September 1, while Board Chair Joseph Scardino responded, on behalf of the Board, by letter dated September 11. Both complaints allege that a quorum of the Authority and the Board jointly met with the Stoughton Select Board (the "Select Board") in executive session on August 25 without posting notice.

1 All dates in this letter refer to the year 2020. Following our review, we find that the Authority violated the Open Meeting Law in the way alleged. We find that the Board did not violate the Open Meeting Law. In reaching this determination, we reviewed the original complaints, the Authority's response to the complaint, the Board’s response to the complaint, and the complaint filed with our office requesting further review. We also reviewed the notice and executive session minutes of the Select Board meeting held on August 25.

FACTS
We find the facts as follows. Both the Authority and the Board are five-member public bodies; thus three members constitute a quorum. There are no common members between the Authority, the Board, and the Select Board. On Friday, August 21 at 11:42 A.M., the Select Board posted notice for a meeting to be held on Tuesday, August 25 at 7:00 P.M. The notice listed two topics - an executive session to discuss "strategy with respect to negotiations with nonunion personnel pursuant to G.L. c. 30A, Section 21(a)(2) (Town Manager)" and an executive session to "consider the purchase, exchange, lease, or value of real property pursuant to G.L. c. 30A, Section 21(a)(6) [31 Porter Street-Post Office site]." Approximately two hours after the notice was posted, the Select Board invited both the Authority and the Board to the August 25 meeting. Neither the Board nor the Authority posted notice for the August 25 meeting with the Select Board. The August 25 meeting of the Select Board was held as planned. Three of the five Authority members were present at this meeting, as well as three of the five Board members. During the executive session, the Select Board discussed concerns with and possibilities for the sale of the Post Office site. One Authority member explained that the Authority had previously discussed subdividing the area and would further discuss the possible development of green space at the site during its meeting next week. Another Authority member then expressed her opinion about possible funding relating to the rezoning and redevelopment of the area. Two members of the Board asked questions regarding the role of the Downtown Task Force with respect to the site and who would ultimately negotiate the sale of the Post Office site.
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DISCUSSION
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 public bodies post notice of each meeting "at least 48 hours prior to such meeting, excluding Saturdays, Sundays and legal holidays" and that every notice include "the date, time and place of such meeting and listings of topics that the chair reasonably anticipates will be discussed at the meeting." G.L. c. 30A, § 20(b). A public body may enter an executive, or closed, session for any of the ten purposes enumerated in the Open Meeting Law provided that it has first convened in an open session, that a majority of members of the body have voted to go into executive session, that the vote of each member is recorded by roll call and entered into the minutes, and the chair has publicly announced whether the open session will reconvene at the conclusion of the executive session. G.L. c. 30A, §§ 21(a), (b); see also OML 2014-94.2 One permissible reason for a public body to convene in executive session is "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." G.L. c. 30A, § 21(a)(6) ("Purpose 6"). The complaint alleges that the Authority and the Board failed to post notice when it met with the Select Board in executive session on August 25. The Authority and the Board respond that they relied on the advice of the Select Board that their presence at the August 25 meeting would not violate the Open Meeting Law because they were simply there "for the purpose of information sharing and informational updates." The Open Meeting Law defines a "meeting," in relevant part, as "a deliberation by a public body with respect to any matter within the body's jurisdiction." G.L. c. 30A, § 18. The law defines "deliberation" as "an oral or written communication through any medium, including electronic mail, between or among a quorum of a public body on any public business within its jurisdiction." Id. For the purposes of the Open Meeting Law, a "quorum" is a simple majority of the members of a public body. Id. Here, a quorum of both the Authority and the Board were present at the August 25 executive session meeting. Therefore, we next determine whether the Authority or the Board communicated about public business during the executive session meeting.

We find that the Authority deliberated during the August 25 executive session meeting where two members of the Authority provided updates on and shared their opinions about matters relating to the Post Office site that had previously been discussed and were still pending before the Authority. The Open Meeting Law does not carve out an exception to the definition of "deliberation" for discussions that do not result in a decision or vote. Any communication among a quorum of a public body on matters that are pending or will come before it and within the public body's jurisdiction is considered deliberation. See OML 2015-3; OML 2014-108; OML 2013-136; Boelter v. Board of Selectmen of Wayland, 479 Mass. 233, 243 (2018). As such, the Authority violated the Open Meeting Law when a quorum deliberated in executive session with the Select Board on August 25 without having posted notice of that meeting. The Select Board has released the executive session minutes of the August 25 meeting and we find that these minutes contain an accurate summary of the discussions that occurred during the meeting, including the discussion by the Authority; therefore, we order no additional relief. See OML 2014-150.

2 Open Meeting Law determinations may be found at the Attorney General's website, https://www.mass.gov/the-open-meeting-law.
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maintain accurate minutes of all meetings, including executive sessions, setting forth the date, time and place, the members present or absent, a summary of the discussions on each subject, a list of documents and other exhibits used at the meeting, the decisions made and the actions taken at each meeting,

including the record of all votes.” G.L. c. 30A, § 22(a). As such, we strongly encourage the Authority to review and adopt a copy of the Select Board’s minutes, as it was functionally a joint meeting of the two bodies. See OML 2013-38; OML 2011-16.

Whether the Board deliberated is a closer call. Although two members of the Board asked questions about the Post Office site, we find that these communications were not related to public business within the Board’s jurisdiction as the questions merely sought clarification on the role of other town public bodies and employees with respect to the sale of the Post Office site. Thus, we find that the Board did not deliberate during the Select Board’s August 25 executive session, and therefore did not hold a “meeting” requiring notice under the Open Meeting Law. See G.L. c. 30A, §§ 18, 20(b); OML 2013-156. 4

CONCLUSION
We find that the Authority violated the Open Meeting Law when a quorum deliberated in executive session at the Select Board’s meeting on August 25 without having posted notice of that meeting.

However, we find that the Board did not deliberate during the August 25 executive session meeting. We order immediate and future compliance with the law’s requirements by the Authority, and we caution that similar future violations could be considered evidence of intent to violate the law.

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 Authority or the Board. Please feel free to contact our office at (612) 663-2540 if you have any questions regarding this letter. Sincerely, KerryAnne Kilcoyne Assistant Attorney General Division of Open Government cc: Joseph Mokrisky – By e-mail only: jmokrisky@msn.com. This determination was issued pursuant to G.L. c. 30A, § 29(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, § 29(d). The complaint must be filed in Superior Court within twenty-one days of receipt of a final order.

Chairman Scardino explained that he is pleased to report that the Board did not deliberate at that meeting and that the letter was well received and they were exonerated.

Motion by Mr. Kelly to open Item #2, ANR (West Street), and seconded by Mr. Demusz. Roll call taken, All in favor, Motion Approved 4-0-0.

Item #2. Approval Not Required (ANR) Application – West Street (Gigi Munden)

Mr. Charbonneau explained that all issues on this property were satisfied and there are not any outstanding issues, and we can proceed.

Motion by Mr. Mr. Kelly to endorse the ANR Plan for West Street, seconded by Mr. Demusz. Roll call taken, All in favor, Motion Approved 4-0-0.
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Mr. Charbonneau explained that since Mr. Garland is not present, and we need a super majority to vote, we will have to hold off on the vote until our next meeting on July 22nd.

Mr. Richard Terry explained that on June 17th, Mr. Oakes submitted the revised documents and addressed all fifteen (15) items.

Mr. Kabba had no questions, since he was not up-to-speed on the information. He did have a concern regarding general liability and what happens if there is a slip and fall accident.

Mr. Kelly referred to the O&M Plan. What happens later if there are no volunteers? He is not concerned with the applicants efforts, just if the town is ready to do the upkeep.

Mr. Terry explained they are supported by a volunteer group or long-term users of the dog parks. He explained they get wood chips donated once a year and hope to get more volunteers to continue this effort for the next twenty (20) years. This is a moderately sized dog park and there are approximately 15,000 dogs in Stoughton. They are using low level lighting on the walkways and discourage use of the park at night.

Mr. Charbonneau suggested getting something in writing from the Town that they are ready to help with the maintenance if needed. He will send an email to the DPW Department for the Applicant and will obtain a letter from DPW about their involvement.

Mr. Terry will have information before the next meeting regarding lighting; a letter about liability; and documentation from DPW or the Town on maintenance.

**Motion** by Mr. Kelly to continue this hearing until July 22, 2021 at 7:00 p.m., and seconded by Mr. Demusz. Roll call taken, All in favor, Motion Approved 3-0-0 (Kelly, Demusz, Kabba).

Chairman Scardino returned to the meeting at 7:35 p.m.

**Motion** by Mr. Demusz to open Item #5, 421 Page Street, and seconded by Mr. Kabba. Roll call taken, All in favor, Motion Approved 4-0-0.

Item #5. A New Public hearing will be held on the petition of the applicant Alexander Wah, LLC, 37 Rogers Street, Cambridge, MA 02142 and represented by Thomas J. Recupero, Recupero Law, 1185 Turnpike Street, Stoughton, MA 02072 and Austin Turn, Bohler Engineering, 352 Turnpike Street, Southborough, MA 01772 for Site Plan Approval under Section 10.6 “Site Plan Approval” of the Stoughton Zoning Bylaws to construct a 44,000 square foot building addition to the existing building and other site improvements to accommodate a proposed tofu manufacturing facility on the property identified as 421 Page Street (further identified on Assessors Plan No. 95, Lots 39 and 40 and located in the Industrial (I) zoning district.
Motion by Mr. Kelly to open Item #3, Landscape Bond Release, and seconded by Mr. Demusz. Roll call taken, All in favor, Motion Approved 4-0-0.

Item #3. Landscaping Bond Release Request (472 Washington Street – Ronen Drory)

Mr. Choubah is the engineer on this project and had a list of items to complete which has been completed. The Board is holding a bond in the amount of $41,500.

Mr. Horsfall reviewed the property on June 10, 2021 and recommends the release of all the withheld funds.

Motion by Mr. Kelly to release the bond in full in the amount of $41,500, and seconded by Mr. Kabba. Roll call taken, All in favor, Motion Approved 4-0-0.

Mr. Charbonneau will notify Mr. Drory and have the money released.

Chairman Scardino recused himself from the next hearing at 7:15 p.m. Mr. Charbonneau will text him when he can return.

Motion by Mr. Kabba to open Item #4, 760 Pleasant Street, and seconded by Mr. Demusz. Roll call taken, All in favor, Motion Approved 4-0-0.

Item #4. A continued public hearing will be held on the petition of the applicant The Town of Stoughton, 10 Pearl Street, Stoughton, MA 02072 and represented by Richard Terry of the Capen Reynolds Farm Use and Development Committee and Shane Oates, Center Mount Land Development, L.L.C, 33 Commercial Street, Raynham, MA 02767 for Site Plan Approval under Section 10.6 “Site Plan Approval” and a Special Permit under Section 6.19 of the Stoughton Zoning Bylaws to construct a community garden and gated dog park with associated parking, site grading, low impact drainage facilities and water and electrical service extensions on the property identified as 760 Pleasant Street (further identified on Assessors Plan No. 81, Lot 24 and located in the Residential Suburban C (RC) zoning district.

Mr. Kelly took over the meeting after Chairman Scardino recused himself. He introduced Mr. Richard Terry and Shane Oates, the Engineer.
Austin Turner of Bohler Engineering, explained his renderings and stated that he has worked closely with the Town Planner and the Engineering Department. They updated the landscaping plan and worked with Chairman Scardino, and addressed all comments and feedback they had received. They landscape plan addresses the fencing; the retaining wall, and incorporated the fencing on the retaining wall so it is identical to the hotel; and the compactor in the rear (not a dumpster), will be screened with an eight (8) foot high vinyl fence with a swing gate (shown on the detail page). New wording to be included: “The compactor should be screened with a comparably size FVC fence so compactor is not visible and shall be shown on a detail sheet of the plan set.”

A Decision was presented along with the Conditions on the screen so everyone could review. Mr. Turner will do all upgrades and reflect any changes and the Board will receive the upgrades tomorrow.

The Board discussed the rooftop screening and how visible it is from the hotel next door. The wording regarding the screening should have an addition which should read “to ground view from Page Street and abutting hotel property.”

Attorney Recupero asked to Board for a few slight changes to the Conditions including adding:

- “Mitigate the relevant issues” to Condition #9; along with
- “Number of numerous complaints”; and
- Adding the word “Final” to Certificate of Occupancy.

**Motion** by Mr. Kelly to Approve the Site Plan for 421 Page Street, and for Chairman Scardino to sign the Plans as representative of the Planning Board, and seconded by Mr. Kabba. Roll call taken, All in favor, Motion Approved 4-0-0.

**Motion** by Mr. Kabba to Open Item #6, General Business, seconded by Mr. Kelly. Roll call taken, All in favor, Motion Approved 4-0-0.

**Motion** by Mr. Kelly to Approve the Minutes of May 27, 2021, and seconded by Mr. Demusz. Roll call taken, All in favor, Motion Approved 4-0-0.

Mr. Charbonneau stated that the next meeting will be held on July 22, 2021 and we have 1580 Turnpike and 19 Camden on the agenda.

Chairman Scardino stated on behalf of the Planning Board, he wishes everyone a Happy & Safe 4th of July.

**Adjournment**

**Motion** by Mr. Kelly to Adjourn, seconded by Mr. Demusz. Roll call taken, All in favor, Motion Approved 4-0-0.