



The Commonwealth of Massachusetts
Office of the Attorney General
One Ashburton Place
Boston, Massachusetts 02108

TOWN OF WILLIAMSTOWN

AUG 20 2013

TOWN CLERK

OPEN MEETING LAW COMPLAINT FORM

Instructions for completing the Open Meeting Law Complaint Form

The Office of the Attorney General's Division of Open Government is responsible for interpreting and enforcing the Open Meeting Law. Pursuant to G.L. c. 30A, §23, the Open Meeting Law requires that complaints must first be filed with the public body that is alleged to have committed the violation, prior to filing a complaint with the Attorney General.

The complaint must be filed with the public body within 30 days of the alleged violation, or if the alleged Open Meeting Law violation could not reasonably have been known at the time it occurred, then within 30 days of the date it should reasonably have been discovered. The complaint must set forth the circumstances which constitute the alleged violation, giving the public body an opportunity to remedy the alleged violation.

Please complete the entire form, providing as much information as possible, to assist the public body in responding to your complaint. The Division of Open Government will not, and public bodies are not required to, investigate anonymous complaints. You may attach additional materials to your complaint if necessary. The public body may request additional information if necessary.

For complaints alleging a violation of the Open Meeting Law by a local public body, you must file with the public body and file a copy with the clerk of the city or town where the alleged violation occurred. For complaints alleging a violation by a county, regional or state public body, you must file with the chair of the public body.

If you are not satisfied with the action taken by the public body in response to your complaint, you may file a copy of your complaint with the Attorney General's Office 30 days after filing your complaint with the public body. The Attorney General's Office may decline to investigate a complaint that is filed with the Attorney General's Office more than 90 days after the alleged OML violation, unless an extension was granted to the public body or the complainant demonstrates good cause for the delay.

The complaint must include this form and any documents relevant to the alleged violation. A complaint may be filed either by mail or by hand:

Office of the Attorney General
Division of Open Government
One Ashburton Place
Boston, MA 02108



OPEN MEETING LAW COMPLAINT FORM

Office of the Attorney General
One Ashburton Place
Boston, MA 02108

Please note that all fields are required unless otherwise noted.

Your Contact Information:

First Name: Kenneth Last Name: Swiatek

Address: 101 Stratton Road

City: Williamstown State: MA Zip Code: 01267

Phone Number: +1 (413) 458-5651 Ext. _____

Email: FolKenS.uch@live.com

Organization or Media Affiliation (if any): _____

Are you filing the complaint in your capacity as an individual, representative of an organization, or media?

(For statistical purposes only)

Individual Organization Media

Public Body that is the subject of this complaint:

City/Town County Regional/District State

Name of Public Body (including city/town, county or region, if applicable): RFP Sub-Committee of the Affordable Housing Committee

Specific person(s), if any, you allege committed the violation: AHC Committee Members, Cathy Yamamoto, Van Ellet, Leigh Short, and Selectman, Thomas Sheldon

Date of alleged violation: May 28-29, 2013

Description Section Of Open Meeting Law Complaint Form – Yamamoto, Sheldon, Short, and Ellet

At an Affordable Housing Committee (AHC) meeting held on May 28, 2013, Chairman Catherine Yamamoto formed a subcommittee to discuss criteria for requests for proposals (RFPs) related to the committee's proposed housing projects. Yamamoto named 2 members of AHC, Van Ellet, and Leigh Short, and Selectman Thomas Sheldon to this sub-committee. A review of a videotaping of the meeting indicated that Chair Yamamoto apparently felt that by forming a subcommittee containing only 2 members of her committee would not constitute a quorum and thus, somehow thus, be totally exempt from all aspects of the open meeting law.

As a result of a review of several videos available on the Internet, it appears that this RFP subcommittee met on the next day, May 29, 2013 and discussed RFP criteria the topic of which is fully germane to the purpose and goals of the AHC. Later that day, Mr. Sheldon reported to the Selectmen at their scheduled meeting that he had met earlier that day, May 29, with Short and Ellet to discuss RFP criteria. This specific information was not reported in the minutes of the Selectmen's meeting. However, a review of a video of the Selectmen's meeting from the 1:35 - 1:38 marks reveals the existence of this earlier RFP subcommittee meeting.

On Tuesday, June 4, 2013, the AHC met jointly with the Affordable Housing Trust Committee, during which they also acknowledged that the RFP subcommittee had met and discussed some of their deliberations and findings during the meeting.

On August 13, 2013, I visited the Williamstown Town Clerk's office and searched all the Town's posted meeting notices for the months of May and June. I was unable to find any meeting notices posted in the Town Clerk's binder holding notices of all posted meetings for any RFP subcommittee meetings.

Failing to post a notice and agenda of a public meeting 48 hours in advance is a violation of the state's Open Meeting Law (OML).

There have been more than one instance on which this RFP subcommittee met, but since the meetings were not properly posted, I have no way to know this.

Here are links to videos of the May 28, May 29, and June 4 meetings:

<http://www.willinet.org/content/affordable-housing-committee-meeting-52813>

<http://www.willinet.org/content/selectmen-meeting-52913>

<http://www.willinet.org/content/joint-affordable-housing-trust-and-affordable-housing-committee-meeting-6413>

Minutes of May 28, 2013 Affordable Housing Committee meeting which are also attached:
<http://williamstown.ws/wp-content/uploads/2013/06/2013may28-aheminutes.pdf>

Reasons why this was a violation of the Open Meeting Law:

1. None of the 3 members are exempt from the OML.
2. None of the 5 exceptions to the definition to a meeting under the Open Meeting Law appear to apply.
3. Any multi-member board or subcommittee (more than one member) if established to serve a public purpose is subject to the OML and meets the definition of a "public body." Thus, this RFP subcommittee consisting of 3 members is a public body subject to the OML with a quorum of 2. Even if the subcommittee only consisted of Short and Ellet it would still meet the definition of a public body and subcommittee, and would, in this instance have a quorum of two.
4. Designing criteria for an RFP needed by the AHC clearly serves a public purpose.
5. The members of the RFP subcommittee certainly appeared to discuss substantive issues related to the RFP process and deliberate. See this iBerkshires coverage of the June 4 meeting (also attached):

<http://www.williamstown.com/story/44132/Williamstown-Affordable-Housing-Committee-Developing-RFP.html>

6. The RFP design process is clearly within the AHC's jurisdiction and it was the purpose for which the RFP subcommittee was formed.
7. Per the AG's Q&A pages, a subcommittee must post its meetings. (See attached)
8. While the deliberation, itself, of the RFP subcommittee was not improper, the subcommittee's failure to properly post their meeting and its agenda 48 hours in advance was a violation of Open meeting law.

The Open Meeting Law is designed to afford the public with the option of attending public meetings and observing them. Failing to post them properly deprives members of the public of their rights.

The process of creating two member (the quorum for a five member committee is three) subcommittees in order to evade OML requirements is not good government, and, in fact, once a subcommittee with a designated public purpose is created, it has its own quorum rules, based on the number of members in the subcommittee, and is fully subject to the Open Meeting Laws.

Since it appears that there may have been other more recent instances where subcommittees have been formed, in part, to avoid compliance with the Open Meeting Laws in Williamstown, a clear and proper interpretation of what constitutes a public body, a subcommittee, a public purpose, and deliberation are crucial to Williamstown's compliance with the Massachusetts Open Meeting Law.

Ken Swiatek
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If a subcommittee of a public body holds a meeting and members of the public body, who are not members of the subcommittee, wish to attend the meeting, must the public body post a meeting notice?

No, as long as the public body does not engage in a deliberation. Members of a public body may wish to attend a meeting of a subcommittee of that public body, even where those members are not part of the subcommittee. In those cases, they may sit in the audience and participate as members of the public. They may address the public body with the permission of the chair, and may state their opinion on matters under consideration by the subcommittee. They may not discuss matters as a quorum, or discuss topics which are not under consideration by the subcommittee. Doing so would constitute a deliberation, and a separate meeting notice for the public body would be required. The subcommittee convening the meeting must still post its regular meeting notice.



Attorney General Martha Coakley

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OML FAQ: Public Bodies

Public Bodies

May a preliminary screening committee, which meets in executive session under purpose 8 to consider candidates for employment or appointment, consist of more than a quorum of the members of the parent body?

No, a preliminary screening committee must consist of fewer than a quorum of the members of the parent body. It may contain additional members who are not members of the parent body. For example, a school committee with seven members may create a subcommittee to conduct a preliminary screening of candidates for superintendent of schools in executive session, and the preliminary screening committee may contain up to three members of the school committee, in addition to several teachers and members of the community.

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Is a committee or board created by a public official subject to the Open Meeting Law?

It depends.

The OML does not apply to committees or boards informally appointed by individual officials to carry out duties that are assigned to such officials. Accordingly, where a public official creates a committee to advise that public official on a decision that he or she has sole responsibility for the committee or board would not be subject to the Open Meeting Law. See *Connelly v. School Committee of Hanover*, 409 Mass. 232 (1991), in which the SJC held that a high school principal selection committee appointed by the school superintendent to assist him in choosing candidates was not a governmental body subject to the OML. Because the superintendent could have chosen a school principal entirely on his own without creating the committee to advise him on a candidates, his informal creation of a committee did not subject the body to the Open Meeting Law.

However, where a public official creates a committee because they are required to do so by law, regulation or at the direction of a governing authority such as a City Council or Board of Selectmen, then the committee will likely be subject to the Open Meeting Law.

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Present Charles Bonenti, Van Ellet, Cheryl Shanks, Leigh Short, Catherine Yamamoto (chair); Absent: Bilal Ansari

Invited for today's business: Peter Fohlin (town manager), Tom Sheldon (AHT)

Also present: Joan Burns, Dick DeMayo, Nancy Scerbo; Martin Filion (Willinet)

Business

1. Minutes

Van Ellet proposed one change to the minutes of May 14. The minutes as amended were approved 4-0-0.

2. Advice on Crafting an RFP

Peter Fohlin introduced the committee to good and bad ways to draft an RFP.

A. Bad: describing sites, recapitulating code, crafting legalese, covering areas that other offices or committees have responsibility for--those can be done later and better by others.

B. Good: criteria for evaluation

1. Legally required, stated standards used to evaluate the proposals, basis for choosing one

2. Can divide them into necessary v. desired attributes

3. Examples include: number of units, number or proportion affordable at various AH levels (low, moderate), number of stories tall, setback from property line, percent impervious surface, how long to completion, density (# units/acre), consistency with its neighborhood, LEED, designated community or laundry area or dining hall; track record of the developer (experience and financial stability)

C. Sending out an RFP

1. Necessary under MGL 30B since these would be for municipally owned properties and would be for projects greater than \$25,000

2. Separate RFPs could be sent out, sequentially, for each site.

3. RFPs could also be sent out simultaneously, in a single bundle, for all possible projects (multiple sites), which has the benefit of educating prospective developers about the development context while still allowing them to bid on only one or two of many if they chose

4. A request is not a pledge, just a request for information.
5. Anyone sending out an RFP should consult or tell related town agencies that it is thinking about doing this, but is not legally required to. Cathy volunteered to draft a letter to the related town committees.

3. Sites

A. 59 Water

1. Need letter from the state saying it's set to be built on, but at least no more actual remediation is needed
2. Need listening session open to the town but focused on neighbors: Charles and Van will try to organize something, tentatively between June 4 and 27 (AHC meeting dates), and tentatively at the American Legion building (in the neighborhood).

B. Photec

1. Waiting for the river to go down before remaining silver contamination can be remediated
2. Already have an evaluation of the building (done a time ago)
3. We must decide whether to send out an RFP noting that a building there needs to be demolished first, or
4. We first get bids to demolish the building.
 - a. If a bid is low enough we can take it and get it done
 - b. It's possible that DHCD could kick money in for demolition if the site is going to affordable housing
 - c. If the town did not demolish the building we would at least have a cost estimate to give to the prospective developer

C. Conflict and competition

There was some discussion of whether with multiple sites in play (including ones not handled by AHC, e.g. Higher Ground and Traggorth) one site was going to be competing with another site for funding, or whether inherent differences were going to put each on a different timetable.

4. Near-term agenda

A. Discussion with Affordable Housing Trust June 4

1. Division of responsibilities/ labor

2. Criteria for the RFP.

Leigh, Van and Tom formed a subcommittee to draft the 25 or so criteria that might apply to the next RFP.

B. Discussion with ConCom about land under their supervision: possibly scheduled for June 27.

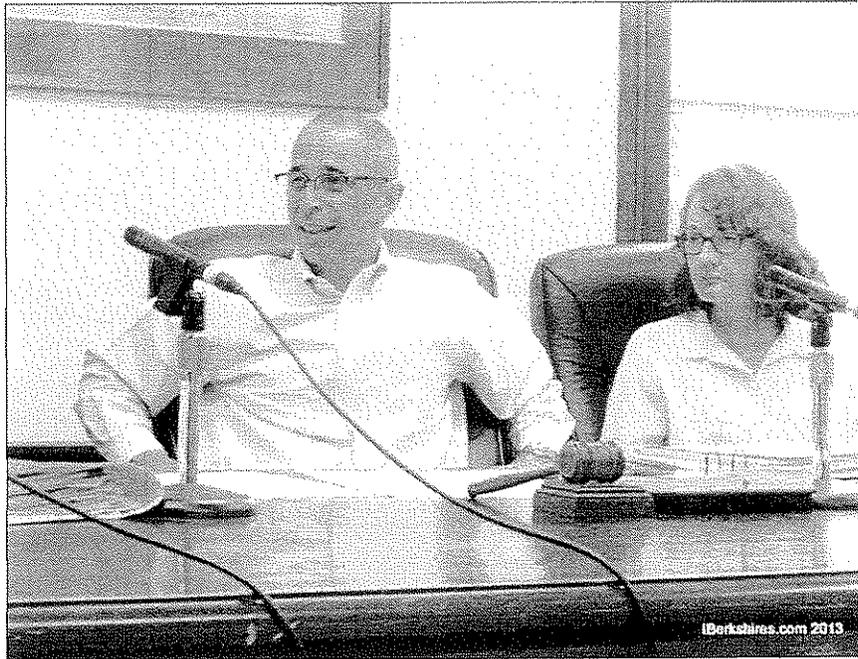
C. Listening session and perhaps discussion for 59 Water: invite neighbors of 59 Water, town residents in general, and the Chamber of Commerce to voice their wishes and concerns about the site's development: Charles and Van will start that in motion.

Next Meeting: June 4 at 7:00
with AHT

Williamstown Affordable Housing Committee Developing RFP

By Stephen Dravis

03:27AM / Thursday, June 06, 2013



Affordable Housing Trust Chairman Stanley Parese said 'confusion is natural' as the trust and other committees working on affordable housing determine the roles they will play.

WILLIAMSTOWN, Mass. — The Affordable Housing Committee is making progress toward finding a developer who would one day build more subsidized housing in town.

At its Tuesday meeting, the committee discussed the elements it might include in a request for proposals the town could issue to attract interested developers.

Committee members Van Ellet and Leigh Short worked with Selectman and Affordable Housing Trust member Thomas Sheldon to draft a list of 26 criteria as a starting point for discussion.

"An RFP is a complex document with a lot of components, and a lot of them are very routine," Sheldon said. "There are a few elements that can only be shaped by the people who know what they're trying to get done. The most complicated of those is probably the list of criteria that would be used to judge the desirability and efficacy of proposals that come in."

The final document would ask potential developers for details of their proposal in a number of areas and provide the "client" (in this case the town) a methodology for evaluating those responses.

"We highlighted seven of the 26 criteria, signaling they may be a little more important," Sheldon said. "Often with RFPs, there's a scoring system and more points are assigned to some areas than others. ... We have to be thinking which of these we value more."

"For example we stress the percentage of low-income and very low-income units. ... We stressed the timing. We stressed the ones that are more transcendent in their importance — that were in view of the three of us."

Although only half of the six-member committee was present for Tuesday's meeting, more potential criteria emerged.

"Another thing that's very important is pets — that it be pet friendly," Chairwoman Catherine Yamamoto said, following up on a concern raised last week when town officials held a listening session with residents at the Spruces Mobile Home Park. "If the developer is also going to be the manager, it might be the manager's prerogative to say, 'no pets.'"

"The walkability of the neighborhood concept is another really important aspect."

Committee member Cheryl Shanks suggested the RFP give points for developers whose plans call for a variety of layouts and some degree of variety in the exterior of the development for aesthetic purposes.

Sheldon suggested that the board might bring in a consultant to help develop the RFP, and Yamamoto added the committee should consult outside sources like the website of the Center for Housing Policy that was recommended by resident Suzanne Kemple.

Yamamoto asked Sheldon whether he saw the Affordable Housing Trust playing a role in developing the RFP. He said the trustees likely would help in reviewing the document and creating language that deals with what town assets could be brought to bear in creating a housing project. In addition to \$400,000 of Community Preservation Act funds the trust has received at the last two annual town meetings, the town is projecting about \$3 million of a \$6 million federal Hazard Mitigation Grant will be available to develop new housing.

Division of labor between the committee and trust was the other main topic on Tuesday's agenda as the two bodies convened in joint session for the first part of the evening.

There are currently three town entities charged with addressing the town's affordable housing needs: the 10-year-old Affordable Housing Committee, the Affordable Housing Trust that was created last year and the Long-term Coordinating Committee that was born this spring to facilitate communication among all the town bodies that have a stake in either housing or the use of town-owned land.

"I for one am finding — and I'm on the inside of a number of the committees — it's hard to figure out whether there are certain pieces of this that make more sense for one entity to do," said Ellet, who serves on the Conservation Commission as well as the housing committee. "There's a lot of confusion in the community, and it's growing in leaps and bounds about who does what."

Trust Chairman Stan Parese, who serves with Yamamoto on the coordinating committee, agreed.

"I think the confusion is natural," he said. "There's a lot going on and a lot of separate committees working simultaneously. The LTCC — I don't know that it's finalized the statement of its mission. We've had three meetings so far."

The super committee's first meeting dealt largely with the unresolved question of its mission. The second meeting was a listening session at the Spruces at which committee members said very little. The third on Monday was spent discussing reaction to that listening session and meeting with an outside consultant.

"One thing I believe everyone on (the LTCC) is cognizant of is not trying to — nor can it — usurp the authority from any other committee," Parese said. "That committee is not going to spend Affordable Housing Trust money. That committee is not going to decide what the

Affordable Housing Committee does relative to an RFP. ... But to the extent that the Affordable Housing Committee wants to talk about Lowry or Burbank, you're talking to the Conservation Commission."

As for the relative roles of the housing committee and housing trust, the consensus that emerged Tuesday was that the former deals in evaluating sites and priorities for the types of housing needed while the latter helps make that vision a reality with the use of town funds.

"If we were a private company — and I'm always a little wary of analogies between the public sector and the private sector — it's almost like you guys are VPs for acquisition and development and we're the finance guys," the trust's Parese said.

In other business, the Affordable Housing Committee discussed the next steps on two town-owned sites nearly ready to go to the RFP stage.

At the former PhoTech mill site on Cole Avenue, the next step might be toward tearing down the mill building itself.

"[Municipal engineer] Tighe & Bond submitted a report on the 'cube,' and they concluded that the building was pretty compromised," Yamamoto said.

While the building might be repaired, the cost of repairs and code-required upgrades to the structure would make it uneconomical to develop it, she said.



Thomas Sheldon is working with Van Ellet and Leigh Short on the criteria of a developer request for proposals.

"What then is proposed is that we seek bids for demolition," Yamamoto said. "We could get the bids but not act them but provide that information to developers. ... Or the town could [demolish it]. We were in discussion with the state (Department of Housing and Community Development) about the availability of funds."

Before the town gets to the stage of seeking bids for demolition, Tighe & Bond said Williamstown would need to prepare the site for an RFP, and the Westfield engineer quoted a bid of \$32,800 to do that job.

"Nothing comes easy, believe me," Yamamoto said. "It's a lot of money to find out how much it will cost to tear down the building."

Yamamoto added that her committee would attempt to negotiate down that price and seek other estimates of the cost to prepare the mill building for an RFP for demolition.

As for the other town-owned brownfield site under consideration for affordable housing, the AHC Tuesday discussed holding a public listening session to seek input from the community about the best use for the former town garage site at 59 Water St.

"The Water Street property is as close to getting ready for development as any piece of property we're looking at," Ellet said. "That's a piece of property with a lot of history and a lot vested interest in the town. ... Prior to putting an RFP out that would include it, it might be good to get input.

"My sense is there are people who have strong feelings about 59 Water St."

Yamamoto charged Ellet with finding a date and location for such a listening session and encouraged him to arrange a similar meeting in regard to the PhoTech site.

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