

APPROVED
3-22-16

**Planning Board Minutes
Tuesday, February 9, 2016**

The Carver Planning Board met on February 9, 2016, at the Carver Town Hall, Meeting Room #4, 108 Main Street, Carver, Massachusetts. This meeting was videotaped for cable cast channel 15.

Mr. Bruce Maki opened the meeting at 7:05 p.m.

PRESENT: Bruce Maki, Chair; James Hoffman; Chad Cavicchi

ABSENT: William Sinclair, Kevin Robinson

ALSO PRESENT: Marlene McCollem, Director of Planning and Community Development; Christine Champ, Recording Secretary

Public Hearing: Proposed zoning article for April 2016 Town Meeting to include utilities standards for storm water control and fire suppression systems in the Zoning Bylaw.

Ms. McCollem describes article. She says there must be a public hearing, vote, changes, amendments, et cetera. And for public comment, there is no one in attendance.

There are no comments.

Mr. Cavicchi makes a motion to close the meeting and Mr. Hoffman seconds. It is approved unanimously.

Mr. Cavicchi makes a motion to submit to the town and Mr. Hoffman seconds. It is approved unanimously.

Discussion:

Letter dated January 19, 2016, from the Attorney General's Office regarding an Open Meeting Law complaint, and release of the Executive Session minutes of September 1, 2015.

Ms. McCollem goes over what the Attorney General found, a couple of technicalities. The posting was not specific enough for the meeting, not identifying the location of property.

Also, be careful of using acronyms, without explanations of same.

As a last point, there's a very specific procedure to be followed to go in and out of executive session. The meeting wasn't opened in public.

In future, there are procedural steps of getting into and out of executive session correctly, and Ms. McCollem can prepare for them. Someone observing the meeting must be able to see what

happens before, after and during.

There is no vote to release the minutes of the meeting of September 1, 2015. They cannot do tonight. It is to be released at another date, when others are here.

Ms. McCollem asks if there are any questions. Mr. Maki says, we must be careful of not doing it again. He asks if anyone else has any thoughts. There are no responses.

Other Business:

Planning Board Member Notes

Mr. Maki asks if there is anything to discuss.

Mr. Hoffman wants to raise money for Zac Kane, planning a Saturday, May 21st, 2016, golf tournament.

Minutes - January 26, 2016

The minutes will be reviewed at the next meeting.

Correspondence, if any

None.

Next meeting date:

March 1, 2016, Room #4

Mr. Hoffman makes a motion to adjourn, seconded by Mr. Cavicchi, making it unanimous. The meeting adjourned at 7:17 p.m.



TOWN OF CARVER

Office of Planning & Community Development

PUBLIC MEETING NOTICE

POSTED IN ACCORDANCE WITH THE PROVISIONS OF M.G.L. CHAPTER 30A, SECTION 20B

PLANNING BOARD MEETING AGENDA

February 9, 2016

7:00 PM

Carver Town Hall Room #4

Public Hearing:

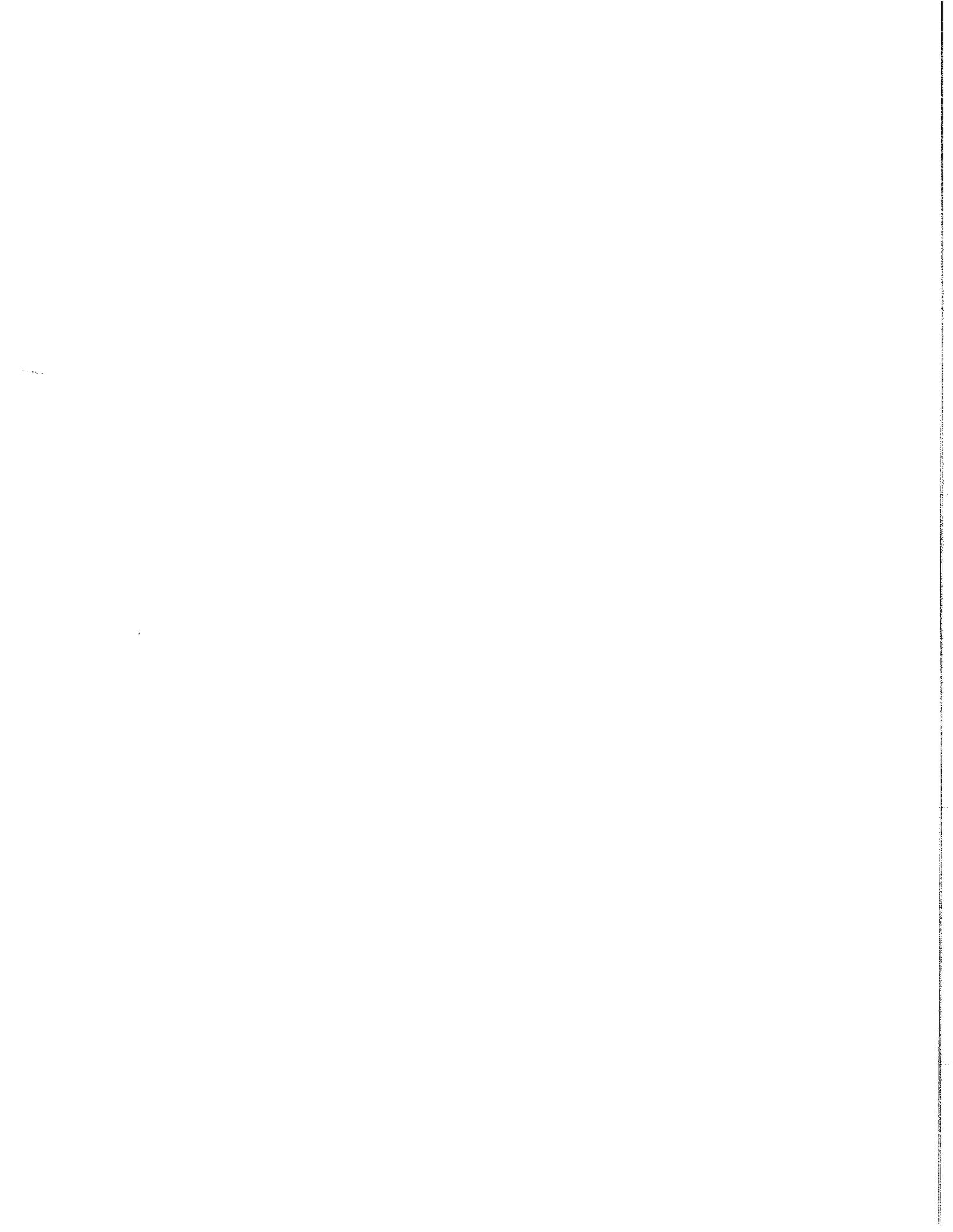
Proposed zoning article for April 2016 Town Meeting to include utilities standards for storm water control and fire suppression systems in the Zoning Bylaw.

Discussion:

Letter dated January 19, 2016 from the Attorney General's Office regarding an Open Meeting Law complaint, and release of the Executive Session minutes of September 1, 2015.

Other Business

- A. Planning Board Member Notes
- B. Minutes –January 26, 2016
- C. Correspondence, if any
- D. Next meeting date: March 1, 2016; Room 4
- E. Adjournment





TOWN OF CARVER

Office of Planning & Community Development

108 Main Street
Carver, MA 02330

Phone: (508) 866-3450
Fax: (508) 866-3430

Public Hearing Notice

The Planning Board will hold a Public Hearing in the Carver Town Hall, Meeting Room #1, 108 Main Street, Carver, Massachusetts on **Tuesday, February 9, 2016 at 7:00 PM** to see if the Town will vote to amend its Zoning Bylaw, Section 3160, Site Plan Review, and insert Section 4200, Utilities, as follows:

To see if the town will vote to amend the Carver Zoning Bylaw by modifying the following portions of Article III—Section 3100—Site Plan Review, and replacing Article IV—Section 4200—Earth Removal with Section 4200—Utilities.

3160. Performance Standards. Any new building construction or other site alteration shall provide adequate access to each structure for fire and service equipment and adequate provision for utilities and stormwater drainage consistent with the requirements found in Section 4200: Utilities. New building construction or other site alteration shall be designed so as to:

3169. Comply with all applicable provisions of this Zoning Bylaw, and other Town Regulations, including but not limited to, Section 3200, General Landscaping Requirements, and Section 3300, Townwide Parking and Loading Requirements.

4200. UTILITIES

4210. Storm Drainage.

1. **General Approach:** A complete storm drainage system shall be laid out and of sufficient size as to permit unimpeded flow of all natural waterways, to provide adequate drainage of all portions of the site, and to prevent adverse impacts due to stormwater discharge from the site.
2. Stormwater from the site shall be recharged to the maximum extent feasible and as near to the runoff source as practicable. Open drainage systems that provide a high level of infiltration, require little maintenance, and result in a minimum of clearing and grading (such as grasses swales or undisturbed natural areas suitable to absorb stormwater) are generally considered superior to closed drainage systems. A series of multiple smaller drainage systems is preferable to a single larger facility.
3. **Design Basis and Method:** Drainage systems shall be designed to comply with the following:
 - a. Where the collection system conveys flows to a detention/retention system designed to control the one hundred (100) year storm, the designer shall document how flows in excess of collection system capacity will be safely directed to the control device.
 - b. Calculations for the analysis of pre-and post-development peak flows at the property line, and for the design of detention/retention devices shall be developed using the Natural Resource

Conservation Service (NRCS) TR-20 methodology.

- c. The development of runoff coefficients (e.g. for the Rational Method) and Runoff Curve Numbers (e.g. for TR-55 and TR-20 methodology) for post-development conditions shall be based on the assumption that the contributing watershed will be fully-developed.
 - d. Separation between infiltration devices and septic systems: A note shall be added to the plan citing use and general location of dry wells, roof leaders and other individual on-site stormwater management systems in order facilitate adequate separation s for septic systems.
 - e. Discharge onto abutting lots: peak stormwater flows at the boundaries of the development shall not exceed peak flows prior to development measured in the same location, based on the two- (2), ten- (10), twenty-five- (25), and one hundred- (100) year, twenty-four hour design storms.
4. Stormwater volumes shall be controlled so that there is no increased negative impact on any abutting property. No flow shall be conveyed over public ways, or over land of others.
 5. Storm drainage structures and appurtenances: The drainage collection system shall be designed to convey projected peak flow rates based upon the twenty-five- (25) year storm utilizing the Rational Method.

4220. Emergency Services.

1. Emergency access roads shall be at least 12-feet wide, constructed of an all-weather surface, and cleared of obstructions to a distance of 4-feet on both sides. Gates, where required, shall be equipped with a standard Carver Fire Department lock.
2. A Fire Protection Distribution System (FPDS) shall be provided when deemed necessary by the Special Permit Granting Authority (SPGA). The SPGA shall request written comments from the Carver Fire Department, prior to making a determination. The FPDS shall consist of water mains, hydrants, and appurtenances designed in accordance with the specifications adopted by the Carver Fire Department.
3. A water supply conforming to NFPA 1231 shall be established on the plans for firefighting purposes when deemed necessary by the SPGA. The SPGA shall request written comments from the Carver Fire Department, prior to making a determination.

Or do or take any other action on this matter. On request of the Planning Board.

Text, map, and other information may be inspected at the Planning Board Office.

Any person interested and desiring to be heard on this request should appear at the time and place designated.

Carver Planning Board
Bruce Maki, Chair

Carver Reporter Publish Dates: January 22 and 29, 2016



THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE ATTORNEY GENERAL

ONE ASHBURTON PLACE
BOSTON, MASSACHUSETTS 02108

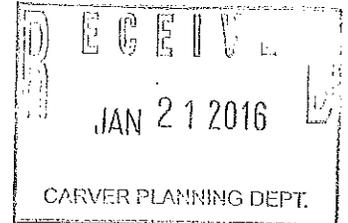
MAURA HEALEY
ATTORNEY GENERAL

TEL: (617) 727-2200
www.mass.gov/ago

January 19, 2016

OML 2016 – 5

Gregg J. Corbo, Esq.
Kopelman and Paige, P.C.
101 Arch Street
Boston, MA 02110



RE: Open Meeting Law Complaint

Dear Attorney Corbo:

This office received a complaint from Robert Belbin, dated October 21, 2015, alleging that the Carver Planning Board (the “Board”) violated the Open Meeting Law, G.L. c. 30A, §§ 18-25. The complaint was originally filed with the Board on September 10, 2015, and, after an extension of time was granted, the Board responded by letter dated October 19, 2015. In his complaint, Mr. Belbin alleges that the Board violated the Open Meeting Law by: (i) providing insufficient information on a meeting notice regarding an anticipated executive session; and (ii) entering executive session for an improper purpose.

Following our review, we find that the Board violated the Open Meeting Law by providing insufficient information about an anticipated executive session. We also find that the Board failed to indicate on its meeting notice that it would convene in open session prior to executive session. However, we find that the executive session at issue was held for a proper purpose. In reaching a determination, we reviewed the original complaint; the Board’s response; and the request for further review filed with our office. We also reviewed the notice for a Board meeting held on September 1, as well as the minutes of an executive session also held on that date. Finally, we spoke with the Board’s legal counsel by telephone on November 6, 2015 and January 8, 2016.¹

FACTS

We find the facts as follows. The Board posted notice for a meeting to be held on September 1, 2015. The notice listed just one anticipated topic: an executive session. The notice stated, in its entirety, the following: “Move to go into Executive Session to discuss strategy with respect to Southern Sky Renewable Energy that may have a financial impact on the Town’s

¹ For the sake of clarity, we refer to you in the third person.



ability to negotiate a PILOT as authorized by Town Meeting that may have a detrimental effect on the bargaining position of the [T]own if held in open session, and to reconvene in open session for purpose of adjournment- discussion and vote possible.”

During the September 1, 2015 meeting, the Board voted unanimously to enter executive session. In this executive session, the Board met with the Town Administrator, who had been in negotiations with Southern Sky Renewable Energy to settle terms for a Payment in Lieu of Taxes (“PILOT”) agreement concerning a parcel of land owned by the Town. The Town Administrator reported on the progress of those negotiations and stated that the Board’s decisions on a certain pending item would affect the Town’s negotiating position with Southern Sky. Specifically, the negotiations concerned a portion of a Town-owned parcel that the Town would lease to Southern Sky on which Southern Sky would install solar panels. At the time, it was uncertain what portion of the parcel would be used for solar panels. Because it was unsettled at the time what portion of the parcel would be used for the solar panels, it was unclear how many solar panels could be accommodated and, therefore, how much revenue the Town could collect from the lease. After being advised by the Town Administrator, the Board then discussed the parcel at issue, ultimately taking no action on it.

DISCUSSION

The Open Meeting Law was enacted “to eliminate much of the secrecy surrounding deliberation and decisions on which public policy is based.” Ghiglione v. Sch. Comm. of Southbridge, 376 Mass. 70, 72 (1978). The Open Meeting Law requires that public bodies post notice of each meeting and include in that notice a “listings of topics that the chair reasonably anticipates will be discussed at the meeting.” G.L. c. 30A, § 20(b). Public bodies must list topics for discussion with “sufficient specificity to reasonably advise the public of the issues to be discussed at the meeting.” 940 CMR 29.03(1)(b). Executive session topics must be described, both in the meeting notice and in an announcement during open session, in as much detail as possible without compromising the purpose for which the executive session was called. See G.L. c. 30A, §§ 20(b), 21(b)(3); District Attorney for N. Dist. v. Sch. Comm. Of Wayland, 455 Mass. 561, 567 (2009) (“[a] precise statement of the reason for convening in executive session is necessary under the open meeting law because that is the only notification given to the public that the school committee would conduct business in private, and the only way the public would know if the reason for doing so was proper or improper.”); 940 CMR 29.03(1)(b).

A public body may enter into executive session for any of ten enumerated purposes. G.L. c. 30A, § 21(a). One such purpose allows a public body to enter into executive session 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”). When noticing an executive session pursuant to Purpose 6, a public body must identify the property to be discussed if doing so would not compromise the purpose for which the executive session was called. See OML 2014-136; OML 2013-97.²

The complaint alleges that the Board provided insufficient information on the meeting notice regarding the anticipated executive session discussion. When planning to discuss a

² Open Meeting Law determinations can be found at the Attorney General’s website: www.mass.gov/ago/openmeeting.

specific piece of property, public bodies should include sufficient information in the meeting notice to identify the property. See OML 2010-2. A specific address is always preferable; however, the public body may also list bordering streets, intersections, landmarks, or other identifying information. Id. Here, the meeting notice did not identify the property to be discussed. While size and boundaries of the area at issue were in flux at the time, the meeting notice nonetheless should have included some description of the parcel being discussed. See OML 2012-52. The Board violated the Open Meeting Law by omitting such a description. Id.

We also find that the description on the meeting notice was flawed in other respects. The notice did not clearly indicate which executive session purpose the Board intended to rely on in order to discuss the PILOT agreement. See OML 2015-126. Furthermore, the Attorney General's Office discourages public bodies from using abbreviations or acronyms in meeting notices if they are not commonly understood. See OML 2014-116; OML 2013-46. Here, we find that the acronym "PILOT" is not one that members of the public are likely to understand. Cf. OML 2015-172 (concluding that "FAA" is a widely understood acronym). The failure to specify the statutory purpose and the use of an unfamiliar acronym also violated the Open Meeting Law. G.L. c. 30A, § 20(b); 940 CMR 29.03(1)(b).

The complaint also alleges that the discussion concerning the negotiations with Southern Sky was inappropriate for executive session. The discussion at issue concerned the lease of real property and we credit the Board's belief that holding the discussion in public would affect the Town's negotiating position with respect to that property. We have stated in the past that a public body may enter a Purpose 6 executive session to discuss negotiations concerning the purchase, exchange, lease, or value of real property being conducted by a third party. See OML 2013-110 (City Council did not violate Open Meeting Law by entering executive session to discuss real estate negotiations being conducted by the Mayor). Here, while the negotiations were being conducted by the Town Administrator on behalf of the Town, the Board's actions would affect the Town's negotiating position. Specifically, the Board's decision regarding the size and dimensions of the parcel at issue would determine how much revenue the Town would receive from the lease. We therefore conclude that the discussion at issue fit within the parameters of Purpose 6 and the Board did not violate the Open Meeting Law by holding this discussion in executive session.

As a final matter, we note that, when the only business to be discussed during an open session the procedural requirements for entering executive session, the public body must list "open session" on the meeting notice, as this is the only means by which members of the public are informed that the public body will, in fact, hold an open meeting that they are permitted to attend. See OML 2015-110. The Board's failure to do so here also violated the Open Meeting Law.

CONCLUSION

For the reasons stated above, we find that the Board violated the Open Meeting Law. We order the Board's immediate and future compliance with the Open Meeting Law and we caution that similar future violations may be considered evidence of intent to violate the law. Because the Board failed to follow proper procedure in convening its September 1, 2015 executive session, the Board may not rely upon the Open Meeting Law as the basis for continuing to withhold the minutes of that executive session. See G.L. c. 30A, § 22(f) (minutes of an

executive session may be withheld from disclosure to the public as long as publication may defeat the lawful purposes of an executive session, *provided that the executive session was held in compliance with the Open Meeting Law*). However, attorney-client privilege or one or more exemptions under the Public Records Law may allow the Board to withhold the minutes, or any portion thereof, from disclosure. Id.

We now consider the complaint addressed by this determination to be resolved. This determination does not address any other complaints that may be pending with our office or the Board. Please feel free to contact the Division at (617) 963 - 2540 if you have any questions.

Sincerely,



Kevin W. Manganaro
Assistant Attorney General
Division of Open Government

cc: Robert Belbin
Carver Planning Board

This determination was issued pursuant to G.L. c. 30A, § 23(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, § 23(d). The complaint must be filed in Superior Court within twenty-one days of receipt of a final order.



TOWN OF CARVER

Office of Planning & Community Development

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Executive Session Minutes

September 1, 2015

Carver Town Hall Room #3

Members present; Bruce Maki; Jim Hoffman; Kevin Robinson; and Will Sinclair.
Also present Jack Hunter and Michael Milanoski.

Chair Mr. Maki called the meeting to order. On a motion by Mr. Sinclair seconded by Mr. Robinson the Planning Board voted unanimously by roll call vote to go into Executive Session to discuss strategy with respect to Southern Sky Renewable Energy Carver LLC that may have a financial impact on the Town's ability to negotiate a PILOT and lease of Town owned property as authorized by Town Meeting that may have a detrimental effect on the bargaining position of the town if held in open session, and to reconvene in open session for purpose of adjournment.

Mr. Maki then introduced the Town Administrator Michael Milanoski to the table. Mr. Milanoski briefed the Board on how he and the Board of Selectmen have been in negotiations with Southern Sky to agree on a Payment in Lieu of Taxes (PILOT) agreement and a lease for several months now and explained how the Planning Board's consideration of Southern Sky's request for certain waivers from the requirements of the Town's solar bylaw might affect the value of that lease and Town's bargaining position with Southern Sky.

Mr. Milanoski explained to the Board that he has estimated that without setback relief, the project could see a significant reduction in leasable land and that such reduction will directly affect the Town's potential revenue..

He then informed the Board he had to leave to a prior commitment.

The Chair thanked him for coming in front of them.

Mr. Hoffman stated that even though he understands the financial implications of increasing the leasable area, but based on the limited information in front of him at this time, he is not conformable in giving any waiver. Mr. Robinson agreed with Mr. Hoffman.

Mr. Hunter reminded the Board that it would take 3 in favor to grant a waiver.

Mr. Maki noted that there was no consensus amongst the Board and that the members should reserve judgment until the matter has been fully heard at a public hearing. Mr. Hoffman and Mr. Robinson agreed to reserve judgment until the appropriate time.

On a motion by Mr. Sinclair, seconded by Mr. Hoffman the Board by roll call vote unanimously removed themselves from executive session and adjourned.