

**Town of Webster
Conservation Commission
Meeting Minutes – June 8, 2023**

A meeting of the Conservation Commission was held on June 8, 2023, in the Town of Webster Selectmen's Meeting Room.

Attending: Chairman, Joey Wigglesworth, Vice Chairwoman, Michelle Sherillo; Clerk Dr. Robin Jewell; and Members; Hayden Brown, Pamela Sheeran, Fred Bock, and Richard Parent

Staff: Ann Morgan, Director of Planning & Economic Development

Chairman Wigglesworth called the meeting called to order at 6:35 p.m. He stated that the meeting was being recorded. Mr. Wigglesworth noted that Karen Bartholomew, 30 Point Pleasant Road, has notified him via email that she would be recording the meeting for personal use. The meeting is being recorded by the Town.

1. Action Items

Mr. Wigglesworth noted that the Commission would be considering the complaints and that only the Attorney General's office can determine if there is a violation. No public input would be allowed. The draft reviews and responses are based on the language filed with the complaints and existing public records. Mr. Wigglesworth noted that the agenda lists action items a through e all of which are open meeting law complaints. Four of the complaints are by Karen Bartholomew and one is by Kristin Valeri.

Mr. Wigglesworth asked the Commission if they preferred to take each complaint individually or if they wished to consider taking action on all complaints at once adding that the Commission's role was to acknowledge receipt the complaints and authorize the staff, be it Conservation Agent Dawn Portman or Director of Planning to respond to the Attorney General's office.

Mr. Brown stated his preference to go through each complaint individually. He noted that the response had to go to the complainant as well as the Attorney General's office. The consensus of the Commission was to go through each complaint individually.

- a. Open Meeting Law Complaint - Karen Bartholomew - Public Meeting Procedure - 24 Point Pleasant Road. Acknowledge receipt of violation and vote to authorize the staff to reply. Continued from 6/5/23.
- b. Open Meeting Law Complaint - Karen Bartholomew - Public Meeting Procedure - 32 Point Pleasant Road. Acknowledge receipt of violation and vote to authorize the staff to reply. Continued from 6/5/23.
- c. Open Meeting Law Complaint - Karen Bartholomew - Public Hearing Procedure - 11 Bates Grove Road. Acknowledge receipt of violation and vote to authorize the staff to reply. Continued from 6/5/23.
- d. Open Meeting Law Complaint - Kristin Valeri - Public Meeting Procedure - 300 Thompson Road. Acknowledge receipt of violation and vote to authorize the staff to reply. Continued from 6/5/23.
- e. Open Meeting Law Complaint - Karen Bartholomew – Public Notice Process - 11 Bates Grove Road. Acknowledge receipt of violation and vote to authorize the staff to reply.

Mr. Wigglesworth read the agenda item noting that this was continued from June 5, 2023. He noted that the Commission had a copy of the staff review, asked if there were any items to discuss and then move forward with a vote to acknowledge receipt and to authorize the staff to reply. Mr. Brown stated that it should be read into the record, review the complainant instructions, discuss the alleged violation

and then provide remedies. He noted that staff has drafted what they feel is what the reply should be which should be read in and then voted upon. Ms. Morgan noted that outline for each of the complaints provides a violation review which pulls out the issues of concern in the complaint and the action requested. It then takes the action requested by the complainant and then provides a background and a potential recommendation which would go the Attorney General's Office in letter form. Mr. Brown asked what would be the action recommended which he does not see on the outline. Ms. Morgan noted that the Commission is not required to recommend an action but rather to respond to the complaint. Ms. Sherillo stated that they were talking in circles and asked what was the response to the complaint. Ms. Morgan noted that we have received the complaint, have reviewed the action requested, and then for the Commission to provide information to the Attorney General's Office to determine if an actual violation has occurred. You're not making a recommendation, just providing the facts to the Attorney General's Office. Ms. Sherillo stated that to take a hypothetical that if the Commission believed that they violated the Open Meeting rule, not reciting anything on the agenda but strictly off the top of her head she believes the process to be: yes – we received the complaint and we agree or disagree that we made a mistake. Mr. Parent stated that, no, that's not what the Commission was being asked to do but rather did the Commission receive the complaint. Ms. Sherillo stated that they have to respond to it with potential actions just like any corrective action. Mr. Parent stated no. The Attorney General will tell the Commission what corrective actions have to happen if there feel there is a violation. Mr. Brown reviewed the instructions provided with the complaint form. His interpretation specifically relating to the instructions is that the Commission is required to provide specific actions to take to be included with their review which is part of the response to be sent to the complainant and the Attorney General's Office along with forwarding the original complaint to that office. Ms. Morgan stated that it was her understanding that the Commission has to respond with any actions already taken or plan to take in the future to address the action requested. She noted that the outlines provided has some material for each complaint. She noted that by going through each outline they will see that through Commission actions, not staff interpretation, the Commission has through various meetings, the restructuring of your agenda, that you have already taken action to address some of this material. The complaints have to involve something that happened at an open meeting. Mr. Brown stated that he didn't disagree but that the response has to include what those actions were. Ms. Morgan noted that some of that was included in the drafts. Mr. Wigglesworth pointed out that these are complaints. The Attorney General's Office still needs to do their legwork and then connect with the Town's attorneys for if any further documentation is required. They will then roll an action down to the Commission and that action would need to be communicated with the public body. Ms. Morgan noted that their job will be first to determine if the complaint is worthy of further investigation or if the complaint has no merit. Mr. Parent stated that it was his understanding that the Commission was to take the packets, understand the completeness of the packet as it relates to the complaint, and then the action would be to send it to the Attorney General. Mr. Wigglesworth stated yes, at this time. Mr. Brown stated that it was his understanding that the Commission has to respond with what the action would be. The action is to notify the Attorney General as to what action has been taken, not just sending it to them which doesn't outline what the Commission plans to do to potentially rectify the situation in the future. The purpose of an action is to change a behavior or an action that was incorrect or improperly done. If something was done incorrectly the Commission would acknowledge what that issue was, what steps have been taken to rectify that in the future. Some of those may have already been done by the adjustments that have been made in how the meeting is run. Those changes should be verbalized and outlined. And if the Attorney General's Office reviews that and they find that nothing has been done incorrectly or that the action is acceptable in their eyes, then it falls between their office and the complainant to escalate that further. Mr. Wigglesworth noted that the Attorney General's Office needs to review that and the Commission needs to vote to authorize staff to send the material to them to investigate in order for them to determine if there is a violation. This is information gathering, recognizing what was

complained about, and then actions requested and then send it to the Attorney General's Office. Mr. Brown asked where were the actions taken. Mr. Wigglesworth noted that there were no actions as of yet. Ms. Morgan noted that some of those actions are listed and in some cases actions may not be applicable in the context of the Open Meeting Law. She noted that the review of the provided outlines would give an opportunity for them to embrace the concerns raised.

Ms. Sherillo suggested that the Commission walk through the first one – 24 Point Pleasant. She stated her belief was that the Commission had used an inappropriate process to approve a fence and that the complainant is suggesting that it was within the Wetlands Protection Act for the Commission to approve a fence because it blocked the access of wildlife. Ms. Morgan disagreed noted that there was no mention of a fence in the complaint. Ms. Sherillo stated that it didn't matter, the complaint was about a fence. Ms. Morgan and Ms. Sherillo entered a disagreement. Mr. Wigglesworth interrupted stating that they would follow Roberts Rules of Order from this point forward, that everything would go through him and this would not become an out of control meeting. All discussion would go through the Chair. He asked Ms. Sherillo if she would like to speak to which she responded yes please. She noted that although the complaint wasn't directly about a fence, it's related to a fence. The complaint has to do, at its face, that the Commission used an inappropriate process when approving a fence. In the complaint it's about the process, not the fence. The evidence, the back up to this complaint, is a series of email exchanges about the fence and about what the Wetlands Protection Act covers regarding a fence and how wildlife transits back and forth with a fence – sometimes it's in, sometimes it's out. If she remembered correctly, this fence was approved through an Administrative Approval and the complaint is that such an approval is, using her own words, an unfair and inappropriate process because it doesn't allow for notice and doesn't allow for anyone affected by the process to have a say. The complaint suggests that it would be more appropriate to go through an RDA or NOI so that public notice can be given and that people can talk about it. Mr. Wigglesworth asked staff to respond. Ms. Morgan stated that she would leave the meeting and that the interpretation was incorrect.

Mr. Wigglesworth recognized Dr. Jewell who noted that all of this transpired via email. Mr. Wigglesworth reiterated the task of the Commission which was to acknowledge receipt of the violation and voting to authorize staff to reply. That is all they are doing, that's all there is on the agenda. The packets are in front of everyone and they will go through each item. He asked if there was a motion to acknowledge of the violation and to authorize staff to reply. The packet is in front of everyone and it will go to the Attorney General's Office for review. It's up to the AG's office to review them and coordinate with the Town for next action items whether it is correcting the process or so forth. He was asked if there were discussing fences to which the answer was no. Mr. Parent asked if the Chairman was asking the Commission to determine if there is completeness of documents as it pertains to the complaint, asking the Commission to approve sending the documentation to the AG's office, and provide actions to those violations that were found. Mr. Wigglesworth noted that the AG's office would respond and get back to the Town if the Commission was deficient and provide corrective action. We have municipal counsel for this reason. The Commission is not creating any recourse on these complaints which is beyond the scope of the Commission. They are responsible for the Wetland Protection Act. This type of thing could happen at any time if someone wants to claim that there is a violation. It needs to go through the appropriate review process. This has been discussed with Town Counsel and other appropriate parties. He reviewed the purpose and process again.

Ms. Sherillo asked if this was the complete packet and there would be no additional words or editorial by the staff. Mr. Wigglesworth stated no and that these are only complaints, no public input is allowed, and this is what is going to the AG's office. She asked again, with nothing else to which the answer was nothing else. This was produced by Ms. Morgan, a department head, and you'll find that your

communications are also in there. Everything is in there for the AG to review and make a determination. Ms. Sherillo noted that, with all due respect, she has direct evidence that in the past the Commission has suggested a response and an editorial comment was added by the staff without the Commission knowing. She's asking to be very specific and ensure that this packet, as it is, is complete with nothing else. Mr. Wigglesworth stated that this packet was going to the AG. Ms. Sherillo noted that the complainant is to receive a copy of the packet with the responses and determine if they are satisfied. She asked if their response was based on whether or it is was a complete packet of what the answer is. She's unclear as to what the complainant was satisfied with – what is submitted or what the answer is. Mr. Wigglesworth noted it was what is submitted. They have provide public records, communications based on the requirements of the Open Meeting Law which goes to the AG's office. It will be reviewed and any specific questions will be communicated to the Town. If something comes back it will be on a future agenda. The AG's office will compile a report after doing their research and will provide recommendations. He noted that some actions have been taken to address some issues such as restructuring the agenda which has improved the efficiency and changed processes for the better.

Mr. Brown stated that he as looking at the third to last page in the first complaint – an email from Kerry Benedon, Assistant Attorney General – in response to Ann Morgan. An extension for the Open Meeting Law complaint was granted in hopes that the parties could reach a mutually agreeable resolution to the complaints. He reads the email further noting that the Division of Open Government is charged with ensuring the compliance of the Open Meeting Law and that they “do not review whether a public body complied with separate laws that may require a public hearing” in specific situations. His interpretation of that language is that Commission has to provide them with what action has been taken. In this draft, he is not seeing an outline of what action the Commission has taken. He's looking to formalize what action was taken. He added that sending the compilation to the AG's Office for them to determine if it's acceptable does not answer what action was taken as a board. Mr. Wigglesworth noted that all the material has to be submitted for review to see if any action needs to be implemented. Anyone can file a complaint on an agenda item, arbitrary or not. If the Commission goes forward with making changes it's possible that there could be non-compliant. He reviewed the process including the submission of materials. Mr. Brown stated his interpretation of Mr. Wigglesworth answer. In a situation where the Commission feels that they have not done anything incorrectly with regards to the Open Meeting Law, the answer to the question regarding action taken would be none. That would be providing the action that the Commission would take. The packet only outlines a review of what the violation was and what the requested action was. There is no action taken listed. Mr. Wigglesworth noted that staff has provided recommendations which have been reviewed by the Town's attorney and this is what is being sent to the AG's office. He didn't believe that Town staff would put the Commission in a position where they would continue to be deficient. Mr. Brown stated that he believed that they are deficient if they don't provide action taken.

Mr. Parent stated that he believed the process involves the AG's Office reviewing materials submitted to determine if there was an Open Meeting Law violation. If there was, the actual action item would be to work on any sort of public hearing that was required to meet the requirements. If there was a finding that a public hearing was necessary to answer the complaint then they are not ruling on anything associated with what is going on here. They're not ruling on whether this was appropriate or not. They are simply ruling on whether there was an open meeting law violation. If it turns out that there has been, it would be the Commission's responsibility to put forth and follow through in a duly noticed and conducted public hearing. If there is compliance, there is nothing further to do. Mr. Wigglesworth noted that these are complaints. They are not specific violations. There have been no determinations on violations. There is nothing for the Commission to do except address what is on the agenda.

Mr. Brown responded that according to the Assistant Attorney General, quoting, “we do not review whether a public body complied with several separate laws that may require a public hearing in a specific situation.” He noted that he believed that Mr. Parent’s interpretation is that the AG will tell the Commission whether or not they have been found in compliance. Based on the AG’s response to Ann Morgan, they are telling us that is not what they do. It is the third to last page.

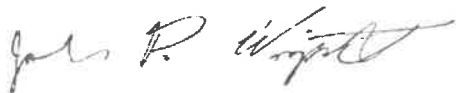
Mr. Wigglesworth noted that they were doing two things – voting to accept receipt of a violation complaint and then voting to authorize the staff or this Town to submit this information to the Attorney General. That is the two things the Commission is doing for each complaint. Dr. Jewell asked if the Commission should have discussed this before making a decision on the fence – there are fences all over the Lake. Mr. Wigglesworth stated that the Commission was not discussing specifics. Mr. Parent noted that if the Commission was going to require and an RDA for all fences going forward then that discussion had to be put on an agenda for discussion in an open meeting. It is not part of this discussion and the Commission shouldn’t even be discussing it. Mr. Brown noted that, however, it could be part of discussing a possible solution to possible violations. And the action could be, put on a future agenda, to discuss making situations or recommendations for requirements for all actions or all construction of fences on the Lake to be required an RDA filing. Mr. Wigglesworth stated that they were not going to be talking about that. If people want to discuss it, then submit an agenda item request for the future.

Mr. Wigglesworth reiterated that they were to vote to acknowledge receipt of the complaints and authorize staff to submit material to the AG’s Office. He asked if there was a motion for action item a. Mr. Parent asked if he could make a motion for all listed action items as he believes that the record is complete to which the answer was yes.

Motion to approve for communication to the Attorney General action items a through e and the packet be sent to complainants as well. Mr. Wigglesworth reiterated the motion acknowledging all violation complaints and vote to authorize the staff to reply. He asked Mr. Parent if that was correct to which the answer was yes. Mr. Bock seconded the motion. Motion passed 5-2 by roll call vote: Mr. Brown – no; Dr. Jewell – yes; Ms. Sheeran – yes; Mr. Bock – yes; Ms. Sherillo – no; Mr. Parent – yes; Mr. Wigglesworth – yes.

3. **Next Meeting Date** – Mr. Wigglesworth noted that the next Commission meeting would be held on June 26, 2023 – Webster Police Station Community Meeting Room
4. **Adjournment:** Mr. Wigglesworth adjourned the meeting at 7:05 p.m.

Respectfully submitted,



Joseph Wigglesworth, Chairman

Date: July 10, 2023

EXHIBITS

- Action Item 2A: Open Meeting Law Complaint - Karen Bartholomew - Public Meeting Procedure - 24 Point Pleasant Road; dated May 12, 2023; 8 pages.
- Action Item 2B: Open Meeting Law Complaint - Karen Bartholomew - Public Meeting Procedure - 32 Point Pleasant Road; dated May 12, 2023; 11 pages.
- Action Item 2C: Open Meeting Law Complaint - Karen Bartholomew - Public Hearing Procedure - 11 Bates Grove Road; dated May 23, 2023; 2 pages.
- Action Item 2D: Open Meeting Law Complaint - Kristin Valeri - Public Meeting Procedure - 300 Thompson Road; dated May 23, 2023; 2 pages.
- Action Item 2E: Open Meeting Law Complaint - Karen Bartholomew - Public Hearing Procedure - 11 Bates Grove Road; dated May 24, 2023; 2 pages.