

DEER COMMITTEE  
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TOWN HALL  
238 Danbury Road  
Wilton, Connecticut 06897

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**SPECIAL MEETING MINUTES**

**March 6, 2019**

**PRESENT:** Mike Russnok (Chair), Scott MacQuarrie, Matt Ellenthal

**ALSO PRESENT:** Pete Gelderman, Bercham, Moses, P.C.; Mike Conklin, Director of Environmental Affairs; Members of Conservation Commission, Members of Tree Committee

**I. CALL TO ORDER**

Mr. Russnok called the meeting to order at 7:05 pm.

**II. DISCUSSION OF FOIA & COMMISSION PROCEDURES – TOWN COUNSEL**

Mr. Gelderman provided information to the Commissioners about the Freedom of Information Act and answered questions about conflicts of interest.

**IV. ADJOURN**

The meeting adjourned at 8:17 pm.

Respectfully Submitted,  
Liz Larkin  
Recording Secretary, Environmental Affairs

**Inland Wetlands Commission Minutes – 2/28/19**

\*Minutes have not been reviewed by this Board and may be subject to revision in future minutes

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**FREEDOM OF INFORMATION ACT OVERVIEW**

**TOWN OF WILTON  
LAND USE AGENCIES**

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March 6, 2019

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## **INTRODUCTION**

The Freedom of Information Act (the "FOIA"), Conn. Gen. Stat. §§1-200 through 1-241, inclusive, represents Connecticut's commitment to open government and a strong policy in favor of public access to meetings and records. The laws concerning access to public meetings are strict and it is suggested that the Town of Westport take a very conservative approach in the interpretation and implementation of those laws.

Subject to narrow exceptions, the FOIA mandates that the public has access to the meetings of public agencies. The following is an overview of the FOIA to the extent it relates to the public's access to the meetings of boards, commissions, committees and subcommittees.

### **I. MEETINGS OF PUBLIC AGENCIES**

#### **1) What is a public agency?**

Conn. Gen. Stat. §1-200 defines a public agency as any executive, administrative or legislative office of the state or any political subdivision of the state and any state or town agency, any department, institution, bureau, board, commission, authority or official of the state or of any city, town, borough, municipal corporation, school district, regional district or other district or other political subdivision of the state, *including any committee of, or created by, any such office, subdivision, agency, department, institution, bureau, board, commission, authority or official*, and also includes any judicial office, official, or body or committee thereof, but only in respect to its or their administrative functions.

Note that the definition of public agency includes any "committee" created by the public agency (i.e., a board or commission). Committees and subcommittees are subject to the same requirements of the FOIA.

#### **2) What is a meeting?**

Conn. Gen. Stat. §1-200 defines a meeting as any hearing or other proceeding of a public agency, any convening or assembly of a quorum of a multimember public agency, and any communication by or to a quorum of a multimember public agency, whether in person or by means of electronic equipment, to discuss or act upon a matter over which the public agency has supervision, control, jurisdiction or advisory power.

A conference call or other communication by means of electronic equipment may constitute a meeting (See Paragraph 4)

In general, there is a meeting anytime a quorum of a public agency convenes to discuss or act upon a matter for which it has responsibility. But note however, that the definition actually describes three kinds of gatherings that can constitute a meeting. The FOIC has viewed gatherings of less than a quorum to trigger FOIA requirements.

3) **What isn't a meeting?**

There are several statutory exclusions in the definition of "meeting". They are:

- a) Meetings of a personnel search committee for executive level employment candidates.
- b) Chance or social meetings not for the purpose of discussing official business.
- c) Strategy or negotiations with respect to collective bargaining.
- d) Political caucuses.
- e) An administrative or staff meeting of a single-member public agency (e.g. the First Selectman).

Also note that a quorum of one public agency who are present at any event which has been noticed and conducted as a meeting of another public agency under the FOIA shall not be deemed to be holding a meeting.

4) **Do e-mail communications constitute a meeting under the FOIA?**

Yes. If distributed among a quorum of the body and the communications relate to a matter over which the body has supervision, jurisdiction, control or advisory power.

**Question:** Could you ever properly conduct a meeting by email communications? The Commission has stated that it is unlikely that email communications among agency members would be able to be conducted in a manner that comports with the open meeting requirements of the FOIA because those persons interested in attending the meeting would not have the opportunity to hear or see the discussion and actions as they transpired at the meeting.

5) **Participation by Electronic Means.**

- a) When can/should a member participate in a meeting by telephone/Skype or other similar means?
- b) Agency should have a policy.
- c) Consider pros and cons.

6) **Types of Meetings; Notice of Meetings**

The FOIA recognizes three types of meetings.

- a) **Regular Meetings** are those for which the public agency must file a schedule with the Town Clerk by January 31 for the ensuing year. These are meeting whose times, dates and places do not typically change.
  - Agendas must be available to the public at least 24 hours in advance.
  - New business may be added to the agenda upon a 2/3 vote of the agency

members present and voting.

- b) **Special Meetings** are those not included on the list of regular meetings.
  - Notice of the meeting, including the time and place and the business to be transacted must be filed with the Town Clerk at least 24 hours in advance. (Notice, as described, is the equivalent of an agenda.)
  - No new business may be added.
  - Must post special meeting agenda on the Town's website.
- c) **Emergency Meetings** may be called in an emergency without advance notice (the term "emergency" will be strictly construed).
  - The content of the meeting and any action taken is limited to the matter that required the emergency meeting.
  - Minutes must be filed with the Town Clerk within 72 hours.

Failure to follow proper procedures can result in voiding a public agency's action.

## II. **EXECUTIVE SESSIONS**

Under certain circumstances, a public agency may exclude the public from a portion of its meeting by calling an executive session.

Executive Sessions are only allowed for:

- 1) Appointment, employment, performance, evaluation, health or dismissal of a public officer or employee, provided that such individual may require that discussion be held at an open meeting.
- 2) Strategy and negotiations with respect to pending claims or pending litigation to which the public agency or a member thereof, because of the member's conduct as a member of such agency, is a party.
- 3) Security issues.
- 4) Discussion of the selection of a site or the lease, sale or purchase of real estate when public discussion would cause a likelihood of an increased price.
- 5) Discussion of any matter which would result in the disclosure of certain other public records (e.g., police records).

There are specific requirements for conducting business in executive session:

- 1) Only agency members may attend, except for persons invited to testify or give opinion (attendance is limited to the time during which persons are providing

testimony or opinion).

- 2) 2/3 of those members of the public agency present must vote at a public meeting to go into executive session. *Must always convene in public to go into executive session, even if the meeting is only for an executive session.*
- 3) Must state the reasons for adjourning to executive session. It is not enough to simply recite the executive session exemption of the FOIA on which the public agency is relying. For example, simply saying: "It is anticipated that the Board will go into executive session to discuss litigation." However, based upon Freedom of Information Commission rulings and court decisions (see Lizotte v. Town of Enfield Planning and Zoning Commission, 1999 WL 712820; Durham Middlefield Interlocal v. FOIC, 1997 WL 491574), it is recommended that the notice specify the case which is being discussed. For example, the Chairman should state the following: "It is anticipated that the Board of Finance will go into executive session to discuss the case of Bloom v. Town of New Canaan." Adding the name of the case will more consistently follow the Act and the Commission's rulings.
- 4) No action taken in executive session. Only discussion is permitted. Any votes are taken in open session.
- 5) No minutes are taken during executive session. Minutes are taken only during the public portion of the meeting. The minutes of the public meeting must include the vote to go into executive session; the reason for the executive session; and the names of the persons in attendance at the executive session. The minutes should also include what time the public agency convened to go into executive session and the time it adjourned and resumed the meeting in public.

#### IV. MISCELLANEOUS MEETING REQUIREMENTS

##### 1) Agendas

The FOIA doesn't provide any clear guidance as to the level of detail that is required in an agenda. However, the agenda should adequately identify the business to be transacted and the date, time and place. If possible avoid items such as:

- "Other business" or "new business" without specific items listed beneath those headings.
- Do not use items above for special meetings (items cannot be added).
- When convening in an executive session is a possibility, the agenda should say "it is anticipated that the Board/Commission will go into executive session" and list the potential exceptions for executive session as specifically as possible.

##### 2) Minutes; Filing of Minutes

Generally, minutes must be available for public inspection within seven (7) days of the meeting to which they refer (Conn. Gen. Stat. §1-225(a)). Minutes should include, at a minimum, the following:

- When the meeting was convened and adjourned.
- Time and place of the meeting.
- Which members of the public agency were present and how they voted.
- Statement of each issue discussed or acted on.
- Purpose of any executive session and who attended.

Hard copies of the minutes must be maintained and filed with the designated person in the department which oversees the particular board, commission, committee or subcommittee.

For those boards, commissions and committees for whom the Town Clerk is not the custodian of the minutes, it is nevertheless recommended that a paper copy also be sent to the Town Clerk's office to be preserved in the Town's archives.

### 3) Votes

The votes (as distinguished from the meeting minutes) of all members of the public agency must be reduced to writing and be available for public inspection within forty-eight (48) hours of the meeting. The votes shall be recorded in the minutes of the session at which taken.

## V. Rules Governing the Conduct of Public Meetings

- 1) Members of the public have the right to attend the open portion of all meetings. Members of the public may not be required to register or sign in as a condition of attendance. The FOIA does not, by itself, give the public the right to participate in meetings.
- 2) Members of the public and the media have the right to record or broadcast meetings; however the agency may, in advance establish procedures for broadcasting.
- 3) If a member of the public creates a disturbance, the agency may remove him or her; if the disturbance persists the public agency may order the room cleared and continue in session. (The media except any members participating in the disturbance must be allowed to remain in attendance.)
- 4) Meetings may be adjourned to a specified time and place. Written notice of the time and place must be posted at the door of the place of the adjourned meeting within 24 hours of the time of adjournment. If a hearing is continued within 24 hours, posting at the place of the adjourned meeting must be immediate.