

August 6, 2020

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BY ELECTRONIC MAIL ONLY ([openmeeting@state.ma.us](mailto:openmeeting@state.ma.us))

Carrie Benedon, Esq.  
Director, Division of Open Government  
Office of the Attorney General  
One Ashburton Place  
Boston, MA 02108

Re: Town of Winchendon – Board of Selectmen  
Open Meeting Law Complaint from Marc Dorwart, dated July 28, 2020

Dear Attorney Benedon:

Please be advised that this office serves as Town Counsel to the Town of Winchendon. The Town's Board of Selectmen ("Board") is in receipt of an Open Meeting Law Complaint dated July 28, 2020 from Mr. Marc Dorwart ("Complaint"). A copy of the Complaint is enclosed. The Complaint claims that the Board did not have a proper purpose for the executive session it held on July 13, 2020. It further alleges that the Board did not make a motion to enter executive session; the Chair did not state whether the Board would reenter open session or close the meeting after the executive session; and that the Board "changed" the purpose of entering executive session after announcing it.

The Board denies the allegations of the Complaint. It should first be noted that in light of the State of Emergency existing at this time and the Governor's Order of March 12, 2020 suspending aspects of the Open Meeting Law, the July 13, 2020 Board meeting was conducted entirely remotely on Zoom. The Board's videos of remote meetings are located on the Town website at <https://www.townofwinchendon.com/board-selectmen/pages/2020-meeting-videos> and the relevant portion of the July 13, 2020 meeting for the Complaint begins at approximately the 1:55 hour mark near the end of the video.

As shown on this video, the Chair did make a motion to enter executive session under Purpose 6 ("to consider the purchase, exchange, lease or value of real property"), stating that an open meeting could have a detrimental effect on the Town's position, and after some discussion with attendees, a roll call vote to enter executive session was taken. The Chair also stated that the meeting would not resume after the executive session. There is no basis, therefore, for these aspects of the Complaint.

This leaves the basis for using Purpose 6 as the remaining point of contention. There has been debate over the past two years between the Town and the residents of Mellen Road (specifically "Middle Mellen Road"), stemming from the Board's determination in 2018 that where

{ Name of Recipient }

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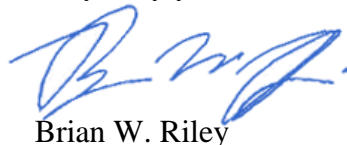
records show that Mellen Road was discontinued as a public way as long ago as 1914, it was neither an obligation or even appropriate for the Town to spend public funds to maintain or plow the roadway. By letter dated April 21, 2020, an attorney retained by some residents of Mellen Road submitted arguments to the Board that, in summary, either the roadway is public now or that the Town is obligated to accept it. A copy of this April 21 letter is enclosed for reference. While this letter makes allegations of damages suffered by abutters, Town Counsel advised the Town Manager that the letter did not rise to the level of “imminently threatened litigation” as interpreted by the Division for utilizing Purpose 3, but it did concern the “value” of Mellen Road for Purpose 6 to apply.

While the Complaint alleges that the Board “changed” the reason for entering executive session, the reason for the session was that the abutters, via the April 21 letter, claim that either Mellen Road is a public way (in which case the Town could be liable for costs of repairs based on the “value” of Mellen Road) or that the Town is obligated to establish the roadway as a public way. Establishment of a public way on private property requires the public authority laying out the way to acquire real property rights within the layout of the way sufficient to provide for the public use. See G.L. c.82, §24. Like any other rights in private property, those rights must be acquired from the relevant property owners by either negotiated sale or exercise of eminent domain. In either case those rights have a monetary value, and the determination of what compensation the Town is willing to pay for those rights, and thus whether the Town is willing or able to lay out a way as public, may be discussed in executive session under Purpose 6. The Chair’s motion identified Mellen Road as the property at issue, and the abutters’ April 21 letter was cited as the reason an open meeting may have a detrimental effect on the Town’s negotiating position. This is all that is required for purposes of a motion to enter executive session under Purpose 6.

While the Board was not discussing purchasing Mellen Road in the typical sense, even if the Board decided to seek to establish Mellen Road as a public way, that is not a requirement to use Purpose 6. See OML 2016-93 (purchase price only one consideration in negotiating over real property “value” where other contingencies exist) and OML 2016-46 (use of Purpose 6 valid after purchase and sale agreement with purchase price executed, based on remaining issues and contingencies).

In summary, the Board submits that its July 13, 2020 executive session was properly noticed, the motion to enter the session met statutory requirements, and the subject matter was appropriate for Purpose 6. The Board submits that no remedial action is needed.

Very truly yours,



Brian W. Riley