

Board of Selectmen Meeting Minutes

02-02-2022, 5 p.m.

Preliminaries:

Board of Selectmen meeting called to order at 5:01 p.m. with Chaz Sexton-Diranian and Veronica Kell present.

Exec Session
motion:

Motion was made by Chaz Sexton-Diranian and seconded by Veronica Kell to go into Executive Session to discuss the reputation, character, physical condition, or mental health of an individual, or discuss the discipline or dismissal of, or complaint or charges against, a public officer, per Ch 30A section 21 and not to return to open session.

Prior to vote: Robert Hennigan, attorney, made an objection to notice provided and asked that his letter to Mr. Perry and Chairman Kell be made part of the record for today's meeting while noting that the client has elected to go into executive session.

Kate Feoderoff, Town Counsel, said that she did receive Mr. Hennigan's letter, and that while the Board cannot post an agenda item as an open session item then go into executive session to discuss, the converse is true, i.e., may post an executive session item then can discuss that item in open session. Attorney Feoderoff called the Division of Open Government today and spoke with Assistant Attorney General Kerry Kilcoyne who concurred with the conclusion that it has been the long-standing position of the DOJ that an agenda item posted in Executive Session can be moved to open session so to the extent that Ms. Smart desires, the discussion can be in open session and the posting was proper.

Motion passed to go into executive session with all in favor.

Executive Session entered at 5:07 p.m.

Adjournment

Adjournment from executive session.

RECEIVED
APR 29 2022

TOWN OF TOWNSEND
TOWN CLERK

SELECTMEN'S MEETING AGENDA FOR FEBRUARY 02, 2022, AT 5:00 P.M.
SELECTMEN'S CHAMBERS, 272 MAIN STREET, TOWNSEND, MA.

Call the meeting to order and roll call.

Executive Session to discuss the reputation, character, physical condition, or mental health of an individual, or discuss the discipline or dismissal of, or complaint or charges against, a public officer, employee, staff member or individual.

Adjourn

THE LAW OFFICE OF ROBERT J. HENNIGAN, JR.
ATTORNEYS AT LAW

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Fax (508) 756-3681
Email: RJHLaw@gmail.com

Robert J. Hennigan, Jr.
Adam F. Kobel

February 2, 2022

By EMAIL and FIRST CLASS MAIL

Ross Perry, Interim Town Administrator
Town of Townsend
272 Main Street
West Townsend, MA 01469

Veronica Kell, Chairman
Board of Selectmen
Town of Townsend
272 Main Street
West Townsend, MA 01469

Re: Executive Session Notice – February 2, 2022 - Carolyn Smart

Dear Mr. Perry & Chairman Kell:

I am in receipt of a copy of the Board of Selectmen meeting agenda for today, February 2, 2022 at 5:00 p.m., as posted on the Townsend website.

Please note that my client considers this purported notice to be defective, and requests that such meeting be postponed until such time as a proper notice is issued.

The Open Meeting Law requires that public bodies post notice at least 48 hours in advance of a meeting and include a "listing 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). The Office of the Attorney General generally considers a topic sufficiently specific when a reasonable member of the public could read the topic and understand the anticipated nature of the public body's discussion. OML 2011-44.

Ross Perry, Interim Town Administrator
Town of Townsend
February 2, 2022
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Further, pursuant to M.G.L. c. 30A, §21(a)(1), when entering executive session to discuss the reputation, character, physical condition or mental health, rather than professional competence, of an individual, or to discuss the discipline or dismissal of, or complaints or charges brought against, a public officer, employee, staff member or individual, "[a] public body shall hold an open session if the individual involved requests that the session be open."

The notice issued by the Board of Selectmen in this matter states that the only purpose for the meeting is to go into executive session, ignoring Ms. Smart's right to have such meeting held in open session. In fact, the notice all but ensures that anyone in the general public receiving notice of the hearing will assume that none of the hearing discussions will take place in an open meeting, and as such there is no reason to tune in.

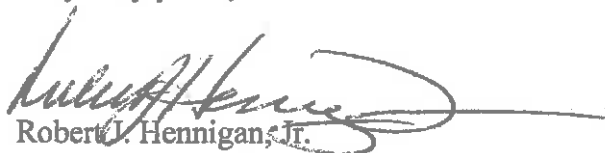
The reason a precise statement of the reason for convening in the session is necessary under the open meeting law is because this notice is the only notification given to the public of the business to be discussed, and the only way the public would know prior to the hearing whether the matter will be discussed in public.

The February 2, 2022 agenda, as written, is improper as it implies that Ms. Smart has already asserted her right to have the meeting in executive session, and this notice purports to inform the public that there is no reason to tune into, or attend, such meeting.

My client requests that the meeting currently scheduled for February 2, 2022 at 5:00 p.m. be postponed until such time as a proper notice of the meeting can be issued in accordance with the Open Meeting Law.

Should the Board of Selectmen choose to go forward with the meeting this evening, my client will be filing a Complaint with the Office of the Attorney General, and will seek to have any adverse action taken by the Board of Selectmen against my client declared null and void.

Very truly yours,



Robert J. Hennigan, Jr.

RJH/sdh

cc: Ms. Carolyn Smart (via email)
Katherine M. Feodoroff, Esquire (via email)