

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by
John J. Donohue,

Report of Hearing Officer

Complainant

Docket #FIC79-216

against

Town of Orange; and Planning and
Zoning Commission of the Town of
Orange,

July 15, 1980

Respondents

The above captioned matter was heard as a contested case on April 1, 1980, at which time the complainant and the respondents appeared and presented testimony, exhibits and argument on the complaint.

After consideration of the entire record, the following facts are found:

1. By letter October 10, 1979 the complainant alleged several violations of the Freedom of Information Act by the respondent commission at meetings on September 18, 1979 and September 25, 1979.
2. The violations noted by the complainant at the September 18, 1979 meeting included the failure of the respondent commission to vote upon a motion to go into executive session; that the respondent commission held an executive session for an improper purpose; and that the respondent commission failed to formalize its actions on issues before it as motions and votes upon those motions.
3. The respondent commission admitted that it had met in executive session twice during the September 18, 1979 meeting and on both occasions had no motion or two-thirds vote on the question whether they should convene in executive session.
4. It is found that the failure of the respondent commission to move into executive session by proper motion and two-thirds vote violates the requirements of §1-21, G.S.

5. The minutes of the meetings held on September 18, 1979 show that an executive session was held to discuss planning activities.

6. It is found that discussion of planning activities is not a proper purpose for an executive session within the meaning of §1-18a(e), G.S.

7. The minutes of the September 18, 1979 meeting provide in part:

The Commission will ask the Mall Associates to request a 65 day extension to allow time for additional studies to be concluded and for the proper review of accumulated data. Mr. Mudie was instructed to contact individuals who might be interested in contracting to do a traffic study.

8. Section 1-21 G.S. provides in relevant part that "the votes of each member of any such public agency upon writing and made available for public inspection within forty-eight hours, excluding any Saturday, Sunday or legal holiday, and shall also be recorded in the minutes of the session at which taken, which minutes shall be available for public inspection within seven days of the session to which they refer."

9. It is found that the respondents did reach a consensus on the issues of whether to ask Mall Associates to request a sixty-five day extension and whether to initiate a traffic study.

10. It is found that the respondent commission violated §1-21 G.S. when it failed to formalize the aforesaid consensus as a motion and vote.

11. The complainant alleged that on September 25, 1979 the respondent commission went into executive session improperly, held an executive session for an improper purpose, and failed to formalize its actions on issues before it as motions and votes.

12. The respondent commission did not go into executive session by motion or two-thirds vote.

13. It is found therefore that the respondent commission violated §1-21 G.S. when it failed to comply with the proper procedure for going into executive session.

14. The executive session was held for the purpose of interviewing traffic consultants.

15. The respondent commission claimed that the interviews were properly held in executive session under §1-18a(e)(1), G.S.

16. Section 1-18a(e)(1), G.S. provides in relevant part that executive session means a meeting of a public agency at which the public is excluded for the purpose of "[d]iscussion concerning the 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."

17. It is found that the respondent commission failed to prove that the traffic consultants were "public officials" or "employees" or that the interviews were "discussion" within the meaning of §1-18a(e)(1), G.S.

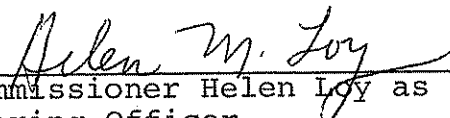
18. At the meeting of September 25, 1979 the respondent commission granted a 65 day extension to Mall Associates without any motion being made or without any vote being taken.

19. It is found, therefore, that the respondent commission did reach a consensus on whether to grant the extension of time to Mall Associates.

20. It is further found that §1-21, G.S. requires that the aforesaid consensus be formalized as a motion and vote by the respondent commission.

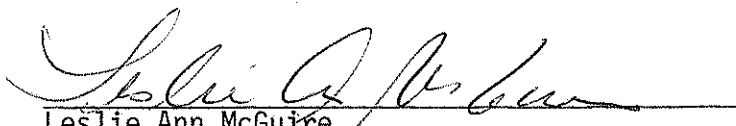
The following order by the Commission is hereby recommended on the basis of the record concerning the above captioned complaint:

1. The respondent commission shall henceforth comply with the requirements of §1-21 and §1-18a(e), G.S.



Commissioner Helen Loy as
Hearing Officer

Approved by order of the Freedom of Information Commission on August 27, 1980.



Leslie Ann McGuire
Clerk of the Commission