

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by
Margaret M. Cleary,

FINAL DECISION

Complainant

Docket #FIC84-89

against

September 26, 1984

Zoning Board of Appeals of
the City and Town of Danbury,

Respondent

The above captioned matter was heard as a contested case on August 6, 1984 at which time the complainant and the respondent appeared and presented testimony, exhibit and argument on the complaint.

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

1. The respondent is a public agency within the meaning of §1-18a(a), G.S.
2. On April 26, 1984 the respondent held a meeting during which it discussed a request by John Errichetti Associates for variances for the development of a parcel of land in Danbury.
3. At the April 26, meeting motions to grant and to deny went unseconded, resulting in the tabling of the matter. At the close of the discussion a member of the respondent, Mr. Jowdy, indicated that he would be unavailable for the next regular meeting, and asked that the Errichetti matter be postponed until May 24, 1984 to allow him to participate.
4. At the respondent's next meeting, on May 10, 1984, the respondent granted five variances to John Errichetti Associates.
5. By letter of complaint filed with the Commission on May 29, 1984 the complainant alleged that the respondent failed to properly file its agenda for the May 10 meeting and that on May 10 the respondent improperly took action on a matter not scheduled for discussion after the chairman had dismissed interested persons from the meeting with the assurance that the matter would not be considered.
6. At hearing Thomas R. Green and Donald F. Cleary were granted intervenor status to participate at the hearing level.
7. Just prior to the May 10 meeting counsel for the complainant made a request at the office of the city clerk for a copy of the respondent's agenda for that evening and was told that no agenda was on file.

8. It is found that the "legal notice" of the May 10, 1984 meeting was on file in the planning department office more than 24 hours prior to the May 10 meeting. Such legal notice indicated that public hearings would be held on variance applications, where the meeting would be held, at what time and which applications would be considered.

9. The respondent considers the planning department office its "regular office or place of business" within the meaning of §1-21, G.S. and claims that the legal notices of its meetings function as agendas.

10. Counsel for the complainant having made no request for the agenda at the planning department office, it is impossible to determine whether, as the respondent claims, the respondent would have been given a copy of the legal notice. However, since the respondent has a regular office or place of business other than the city or town clerk's office, the failure of the respondent to place an agenda for the May 10 meeting on file with the city or town clerk did not, without more, violate §1-21, G.S.

11. It is found that prior to the May 10 meeting a rumor circulated that the Errichetti matter would be considered at such meeting. For that reason the complainant and her counsel appeared at the meeting.

12. At the May 10 meeting counsel for the complainant asked the chairman of the respondent if the Errichetti matter would be discussed that night. The chairman responded that the matter would not be discussed and that persons interested in the matter were free to leave. Another member of the respondent, Mr. Spano interjected that, to the contrary, "we will decide that tonight." The chairman, Mr. Schum then replied "[n]o, so we will begin tonight's agenda."

13. Upon being told that the Errichetti matter would not be discussed, the complainant left the meeting.

14. At the conclusion of the discussion of matters scheduled for hearing, Mr. Spano requested that the respondent act on the Errichetti application. His request was seconded by another member, Ms. Estefan. The chairman objected on the ground that he had already told members of the public that the matter would not be decided that night. A discussion of the relative merits of taking up the matter ensued. Mr. Spano then stated, according to the minutes of the meeting, "we have enough people so we're going to vote. I make a motion that we GRANT this application . . ." Sally Estefan seconded the motion, following which the members of the respondent voted to grant the variances.

15. The respondent claims that following Mr. Spano's motion to act on the Errichetti application other members of the respondent indicated, in an informal manner, their willingness to act on the application. The respondent claims that the effect of Mr. Spano's motion and the resulting assent of the other members was a vote to consider a non-agenda item within the meaning of §1-21, G.S.

16. §1-21, G.S. provides that "[u]pon the affirmative vote of two-thirds of the members of a public agency present and voting, any subsequent business not included in [the] filed agendas may be considered and acted upon at [regular] meetings."

17. It is found that the circumstances of the May 10 meeting do not indicate that the respondent met the specifically stated technical requirement established in §1-21, G.S. for consideration and action upon a non-agenda item.

18. It is further found that with respect to the complainant, the May 10 meeting was not "open to the public" within the meaning of §1-21, G.S. The effect of the chairman's assurance that the Errichetti matter would not be considered that night was the dismissal of the complainant and other persons interested solely in the Errichetti matter. By dismissing those persons most interested in the Errichetti matter the respondent selectively closed the meeting.

19. It is concluded that the respondent's consideration of the Errichetti matter on May 10, 1984 did not meet the requirements of §1-21, G.S. for the discussion of non-agenda items and that such consideration took place at a meeting that had been effectively closed to a significant portion of the public by the chairman's assurances that the Errichetti matter would not be discussed.

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

1. The Commission hereby declares null and void the respondent's decision at its May 10, 1984 meeting regarding John Errichetti Associates.

Approved by order of the Freedom of Information Commission at its regular meeting of September 26, 1984.



Mary Jo Jolicœur
Clerk of the Commission