

Town of Florida, MA

Town Hall

379 Mohawk Trail, Drury, MA 01343

FHMS Four-Town Broadband Committee Meeting

A meeting of the FHMS 4-Town Broadband Committee was held at the Town of Florida Town Hall on Thursday, December 5th, at 4:30 pm.

MEETING MINUTES

In Attendance

Hawley: Lark Thwing, Chair
Florida: Christine Dobbert
Monroe: David Gagne (Absent)
Savoy: John Tynan (Absent)
WiValley: Brian Foucher

Minutes
Approved,
FHMS Four-Towns
Committee,
January 9, 2020

Call to Order: The meeting was called to order at 4:35 pm.

1. Review and acceptance of minutes:

As this committee had held no prior meetings of this type, there were no minutes to review.

2. Purpose of the meeting:

The purpose of the meeting was to discuss the Open Meeting Law complaint filed by Laury Wills and to decide on a response. This response was due by Saturday December 7 per the Massachusetts Open Meeting Law.

3. Discussion:

The group discussed the feedback that had been received from Jack Ferriter, the FHMS 4-Town Broadband Committee's Attorney, who said the Committee had every right to go into executive session, as the suits filed against the Town of Charlemont and WiValley very much affected our FHMS Four Town project. He stated that we had violated open meeting law if we did not do a roll call vote to enter and exit executive session and that we had not adequately described the reason for going into executive session.

The members present agreed that they had every right to go into executive

session. They accepted responsibility for not properly executing the roll call vote, and agreed that a better job could have been done describing the litigation as regarding the Legate Hill Suit against WiValley and the Town of Charlemont. They also agreed that they would not do any of the specific remedial actions requested in the complaint.

4. Next Steps:

Lark read a sample response he had drafted to the group. He and Christine agreed that it was acceptable as is and should be submitted as the Committee's response to the Open Meeting Law complaint.

Lark agreed that he would email the FHMS Four Towns Broadband Committee response to both Lauri Wills and to the Attorney General's office, as is required by the Open Meeting Law, and that he would follow up with a written reply to both parties.

Once that mailing was done, the Committee agreed it would consider the issue completed and that it would take no other action.

A copy of the Committee's draft response, as accepted at this December 5 meeting, is attached to these meeting minutes (See "FHMS Response to OML Complaint," below).

5. Other Business

Brian told us that the snowstorm had put his schedule about a week behind and they would be doing some testing next week and the poles were targeted to be erected the week before the Christmas holidays.

Adjournment: The meeting was adjourned at 5:05 p.m.

Respectively submitted,

Lark Thwing
12/12/19

FHMS Response to OML Complaint

- Complaint received on November 23, 2019 by email and attached here.
- Complaint emailed on November 24 to all members of FHMS Committee-John Tynan(Savoy), Christine Dobbert(Florida), David Gagne(Monroe) and Lark Thwing(Hawley) and committee chair, as required by OML.
- FHMS attorney contacted November 25. He indicated we had every right to go into Executive session to discuss litigation strategy planning even though we were not the ones who had been sued. He said we were heavily invested in a suit against our vender and the town we wanted to erect a communications pole in to serve the town of Hawley because it was our network that was being affected by the suit. He confirmed we were in violation of OML in that we did not properly describe the reason for entering Executive session nor had we done a roll call vote to enter or exit the Executive session.
- A meeting to discuss the OML complaint response was held December 5, 2019 at 4:30 pm at Town of Florida Town Hall as required by OML.
- We disagreed with the complaint part stating we had no right to enter executive session. We agreed we had every right according to enter executive session to discuss litigation strategy as defined by OML. We agreed with the part of the complaint that stated we did not properly describe the reason for entering Executive session and that we had not taken the roll call votes required to enter and exit Executive session.
- Therefore:
 1. We do not agree to disclose to the complainant and the public
 - a) all notes and minutes from, and
 - b) all documents submitted or reviewed or considered during the executive session portion of our meeting on 11/21/19.
 2. Nor will we convene a new meeting and redo in public the complete discussion that was held in executive session so the public can be fully informed.
 3. We do agree we were in violation of not taking the required roll call votes, they were merely voice votes. The chair now has a copy of OML Guide with him at all meetings so proper format is followed when going into executive session.

- This response will be submitted to the complainant and to the Attorney General's Office by mail and email on December 6, 2019 as required by OML.

Division of Open Government
Office of the Attorney General
One Ashburton Place
Boston, MA 02108 Tel: 617-963-2540
OpenMeeting@state.ma.us



OPEN MEETING LAW COMPLAINT FORM

Office of the Attorney General
One Ashburton Place
Boston, MA 02108

Please note that all fields are required unless otherwise noted.

Your Contact Information:

First Name: Laury Last Name: Wills

Address: 18 Alden Terrace

City: Little Silver State: NJ Zip Code: 07739

Phone Number: (732) 939-9042 Ext. _____

Email: lauryannwills@gmail.com

Organization or Media Affiliation (if any): _____

Are you filing the complaint in your capacity as an individual, representative of an organization, or media?

(For statistical purposes only)

Individual Organization Media

Public Body that is the subject of this complaint:

City/Town County Regional/District State

Name of Public Body (including city/town, county or region, if applicable): Four Towns (Florida, Hawley, Monroe, Savoy) Broadband Committee

Specific person(s), if any, you allege committed the violation: Committee Chairman Lark Thwing

Date of alleged violation: 11/21/2019

Description of alleged violation:

Describe the alleged violation that this complaint is about. If you believe the alleged violation was intentional, please say so and include the reasons supporting your belief.

Note: This text field has a maximum of 3000 characters.

At the November 21, 2019, Four Towns Broadband Committee meeting that I personally attended, the Committee entered into executive session after a brief open session. During the open session the committee deferred discussion of 2 agenda items to the executive session. Those agenda items were "tests for acceptability of Legate Hill locations" and further discussion about "alternative Network solutions." I own real property on Legate Hill Road in Charlemont that is directly affected by those issues.

The committee chair, Mr. Lark Thwing, did not state the reason for the executive session beyond a general reference to litigation and did not take a roll call vote of the body to enter into executive session. While the general reason provided for the executive session was "litigation", neither the Four Towns Broadband Committee nor any of its members nor the towns of Florida, Hawley, Monroe and Savoy which make up the committee are parties to any litigation involving the agenda items discussed in executive session.

A public body may go into executive session only for the reasons specified in Mass. General Laws, chapter 30A, section 22. Subsection (a)3 (G.L. c. 30A, § 22(a)3), which states as follows

"(a) A public body may meet in executive session only for the following purposes: ... 3. To discuss strategy with respect to collective bargaining or litigation if an open meeting may have a detrimental effect on the bargaining or litigating position of the public body and the chair so declares;"

The Massachusetts Open Meeting Law Guide states as follows at page 13: "Litigation Strategy: Discussions concerning strategy with respect to ongoing litigation obviously fit within this purpose but only if an open meeting may have a detrimental effect on the litigating position of the public body."

In this case neither the public body, nor any of its members, nor any of the four towns the Committee represents are engaged in litigation so an open meeting could not possibly "have a detrimental effect on the litigating position of the public body." The executive session should not have been used to exclude the public from hearing the committee's discussion of the topics described above.

What action do you want the public body to take in response to your complaint?

Note: This text field has a maximum of 500 characters.

The FHMS Four Towns Broadband Committee must:

- (1) immediately disclose to me and to the public
 - (a) all notes and minutes from, and
 - (b) all documents submitted or reviewed or considered during, the executive session portion of their 11/21 meeting; and
- (2) convene a new meeting and redo in public the complete discussion that was held in executive session so the public can be fully informed of everything that was attempted to be concealed unlawfully by the executive session..

Review, sign, and submit your complaint

I. Disclosure of Your Complaint.

Public Record. Under most circumstances, your complaint, and any documents submitted with your complaint, is considered a public record and will be available to any member of the public upon request.

Publication to Website. As part of the Open Data Initiative, the AGO will publish to its website certain information regarding your complaint, including your name and the name of the public body. The AGO will not publish your contact information.

II. Consulting With a Private Attorney.

The AGO cannot give you legal advice and is not able to be your private attorney, but represents the public interest. If you have any questions concerning your individual legal rights or responsibilities you should contact a private attorney.

III. Submit Your Complaint to the Public Body.

The complaint must be filed first with the public body. If you have any questions, please contact the Division of Open Government by calling (617) 963-2540 or by email to openmeeting@state.ma.us.

By signing below, I acknowledge that I have read and understood the provisions above and certify that the information I have provided is true and correct to the best of my knowledge.

Signed: _____

Jessie Wilb

Date: 11/23/2019

For Use By Public Body
Date Received by Public Body:

For Use By AGO
Date Received by AGO: