The Chester Telegraph
P.O. Box 221 Chester, VT 05143
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9 January 2015

Mr. John DeBenedetti
Chairman
Chester Select Board
P.O. Box 370
Chester, VT 05143

Dear Mr. DeBenedetti:

Pursuant to 1 V.S.A. 310 et seq., this is a complaint alleging a violation of the Vermont Open Meeting Law by the Select Board of the Town of Chester at its regularly scheduled meeting on 19 November 2014.

The posted agenda for that meeting included an executive session for two "contractual matters." As the meeting got under way, you stated that the board would not be taking those matters under consideration, but rather holding an executive session "dealing with a real estate purchase." [Approved Meeting Minutes 11/19/2014]

The SAPA TV recording of the meeting shows that you asked for a motion pursuant to 1 V.S.A. 313 (a) (2) for the "negotiating or securing of real estate purchase options. [*sic*]" Derek Suursoo moved and Tom Bock seconded, and on a unanimous vote, the board entered executive session at 9:38 p.m. with town manager David Pisha and Julie Hance, assistant to the town manager, invited to attend. According to the approved Executive Session Record, "At 11:26 pm, Mr. Thomas Bock made a motion to exit executive session. Mr. Arne Jonynas seconded. All voted in the affirmative. No action was taken."

At the scheduled meeting held on 17 December 2014, the board discussed purchase of 139 $\pm$ acres from Mike and Amy O'Neil. David Pisha gave a presentation that included the justification of purchasing land for a new municipal water tank as part of a system upgrade, the fact that the O'Neils would not sell the acre or two needed for the tank but would sell the entire property, the $399,000 asking price of the land, the justification for buying the land for a supply of gravel, which is thought to be on the site, and the financing options for making the purchase.

On 17 December, when asked by Shawn Cunningham of this newspaper, Mr. Pisha confirmed that the purchase had been suggested by Dufresne Engineers in September and that Mr.Pisha had approached the O'Neils and received the sale price a month ago. Mr. Cunningham then asked members of the board if this had been discussed at the 19 November executive session. Several board members confirmed that the session had focused on the "idea" of the purchase with Mr. Suursoo saying "the initial concept was put out." "We discussed the purchase agreement," said Mr. Bock. "The nature of it."

Mr. Cunningham then asked if any representative of the O'Neils was present at the session and the answer was no.

The particular portion of the Open Meeting Law that was referenced as the justification for entering

executive session (1 V.S.A. 313 (a)(2)) is 11 words long and it is very clear. An executive session is not for exploring a concept or looking at the "nature" of a purchase agreement.

This section allows a select board to shield its proceedings from the public only to negotiate or secure a real estate purchase or lease option. The definition of "negotiate" is when two or more parties work on an agreement. Since no one representing the other party was in the room, it is impossible for such negotiations to have taken place. Furthermore, since the real estate transaction presented at the 17 December meeting was still in the conceptual stage, it seems that there wasn't any "securing" taking place on 19 November either.

It is noteworthy that this violation occurred even after an explanation of what does and does not constitute a legal executive session was given to the board in a special meeting on 29 October in which a representative of the Vermont League of Cities and Towns explained the Open Meeting Law. At that session, attorney Garrett Baxter advised that public boards can only do what is spelled out in law while in executive session. He also advised that if a complaint is filed and a board must acknowledge a violation, that it should say that such violation was "inadvertent."

In the seven meetings between 20 August 2014 and 19 November 2014, the board went into executive session six times for a total of 741 minutes of discussions to which the voters and taxpayers of Chester had no access. (That represents a staggering 39% of the total meeting time for those six meetings.) No action was taken as a result of any of these executive sessions except that of 1 October 2014, when Mr. Pisha was voted a pay raise after the session was adjourned.

While we cannot know exactly what was discussed at the 19 November meeting, it appears to have been held to discuss a "gambit" (as Mr. Bock described it) involving a property that has been the focus of controversy in the past in advance of making the public aware of it. It is clear from the record that holding this meeting behind closed doors was not inadvertent.

The Chester Telegraph requests that the Select Board acknowledge affirmatively that its executive session of 19 November was an intentional and knowing violation the Open Meeting Law. To claim that the session was not illegal or that it was inadvertent in the face of a detailed briefing by a lawyer from the VLCT on how to work within the law would defy reason.

The cure as envisioned in the law, would be to hold open sessions and discuss the same issues as were discussed in the illegal executive session. We acknowledge this would be time consuming and would not be likely to shed much more light on the subject. But, at the very least the town should put into place policies and procedures that will ensure that such violation will not occur again. These should include:

1.) clearly stating – in the open meeting - the purpose of the executive session in as much detail as can be given without putting any party at a "substantial disadvantage." For example, discussion of a contract should state what the contract is for and with whom the board is contracting. The actual sensitive materials that are legally shielded from public view can be maintained while the public at least knows what its elected representatives are working on.

    This should be the case for any of the matters listed under 313 (a)(1). For example, when entering into an executive session to discuss a legal matter involving the town, the nature of the legal issue should be disclosed. While strategy may be rightly withheld, the existence of a legal matter involving the town should not. To quote Mr. Baxter at the Select Board meeting of 10/29:

"More details should be provided than not, so long as doing so does not undermine the basis for entering into executive session in the first place."

2.) where there is to be a finding that a "premature general knowledge would clearly place the public body or a person involved at a substantial disadvantage" under 313(a)(1), the facts leading to that finding should be clear rather than simply stated as a proforma conclusion. To simply make a motion using the language of the statute without any other facts and without discussion puts the board in the position of voting on a motion blind.

3.) recognize that "Personnel" is not a justification under the law for shielding the board's discussions from the public. At least one of the six executive sessions referred to above was held to evaluate the performance of the town manager. An agenda item noting that the board might enter into an executive session to carry out an evaluation of the town manager would make the purpose of the session clear to the public while not revealing any sensitive material. Whatever the session is about is a public matter. Some details, however, are not and those are the only things that may be legally discussed in an executive session. The VLCT's Garrett Baxter made this clear with his example of an annual appraisal of a zoning administrator (SAPA-TV recording of the 10/29/2014 meeting at 55:20)

4.) standardizing the review process for appointments to public boards. In the past, appointments to most public boards have been made in regular sessions without pre-appointment interviews conducted in executive session. Others appointments – especially those for positions on the Development Review Board – have been preceded by interviews conducted in executive session. Either one standard or the other should prevail and since the reason for holding such executive sessions is to shield the potential public board member from embarrassment, it should be the policy of the board to allow the interviewee to decide whether or not a private interview is necessary. Furthermore, the contents of the interview should be treated as the property of the interviewee who should understand that he or she may disclose any and all details of the interview at his or her discretion.

At the 3 December 2014 Select Board meeting, referring to the "buzzword" of transparency, you said, "Everybody stands on their soapbox and uses the word transparency. Well, I'd like to see it." We agree, and we believe that taking these steps will go some distance toward providing transparency in government for the residents and taxpayers of Chester.

Cynthia L. Prairie
Publisher
The Chester Telegraph

cc: Allen Gilbert, American Civil Liberties Union - Vermont