FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by FINAL DECISION

Sharlene McEvoy,

Complainant

against Docket # FIC 2024-0186

Chairman, Planning and Zoning Commission, City of Derby; Planning and Zoning Commission, City of Derby; and City of Derby,

Respondents October 9, 2024

The above-captioned matter was heard as a contested case on August 14, 2024, 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 and conclusions of law are reached:

1. The respondents are public agencies within the meaning of §1-200(1), G.S.

2. By letter of complaint filed April 3, 2024, the complainant appealed to the Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by publishing an agenda for the respondents' March 19, 2024 regular meeting that failed to sufficiently apprise the public of matters to be considered at such meeting.

3. Section 1-225(c), G.S., provides in relevant part:

> The agenda of the regular meetings of every public agency, except for the General Assembly, shall be available to the public and shall be filed, not less than twenty-four hours before the meetings to which they refer, (1) in such agency's regular office or place of business, and (2) … in the office of the clerk of such subdivision for any public agency of a political subdivision of the state …. Upon the affirmative vote of two-thirds of the members of a public agency present and voting, any subsequent business not

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APR 2 0 2026
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Received
APR 20 2026
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included in such filed agendas may be considered and acted upon at such meetings.

4. It is well established that "a meeting agenda must be sufficiently specific to fairly apprise the public of the business to be transacted at such meeting." *Cece v. Police Commission, City of Norwalk, et al.*, Docket #FIC 2012-0434 (April 10, 2013). The purpose of this requirement is to ensure "that the public and interested parties [may] be apprised of matters to be taken up at the meeting in order to properly prepare and be present to express their views." *Zoning Board of Appeals, et al., v. FOI Commission, et al.*, 2000 WL 765186, at *3 (Conn. Super. May 3, 2000), rev'd on other grounds, 66 Conn. App. 279 (2001).

5. It is found that the respondents held a regular meeting on March 19, 2024. It is further found that item 12 on the agenda ("Agenda Item 12") for such meeting stated in full: "Informal discussion with Attorney Dominick Thomas on various subjects."

6. It is found that, at the March 19, 2024 meeting, the respondents engaged in a discussion with Attorney Thomas about three specific development projects, and that such discussion lasted for over one hour. It is also found that no public hearing was held regarding such development projects, and that there were no applications pending before the respondents concerning such projects.

7. It is found that prior to the discussion described in paragraph 6, above, at least one individual attending the meeting objected that the agenda did not provide sufficient information about the subjects to be discussed. It is found that, notwithstanding such objection, the respondents did not amend the agenda as permitted by §1-225(c), G.S.

8. It is found that Agenda Item 12 did not provide the public with any information about the subjects to be discussed with Attorney Thomas. It is further found that such agenda item did not provide the public with any information concerning the nature of Attorney Thomas' practice as it pertains to the respondents, and that without such information, the public could not reasonably be expected to know even the general nature of the subjects that the respondents planned to discuss with Attorney Thomas.

9. At the hearing in this matter, the respondents contended, in part, that Agenda Item 12 was sufficient because no hearing was held and no application was pending regarding the development projects discussed with Attorney Thomas, and therefore that there was no requirement for public participation in such discussion. However, nothing in the FOI Act or the Court and Commission decisions interpreting §1-225(c), G.S., indicate that public agencies' obligation to fairly apprise the public of the matters to be addressed is limited to matters for which public participation is allowed.[1]

[1] The Commission notes that, while the FOI Act does not require public agencies to allow public comment on any agenda item, §86 of the Derby City Charter provides that "[p]rior to the commencement of any public meeting of any board or commission of the city, the agenda for said meeting shall be posted in the meeting room and the *first order of business of said meeting shall be the entertainment of public discussion on any item on said agenda* and the conduct, length and method of terminating said public discussion shall be determined by majority vote of the members of said board or commission." (Emphasis added.)

10. Based on the foregoing, it is found that Agenda Item 12 did not fairly apprise the public of the matters to be discussed at the respondents' March 19, 2024 regular meeting. It is therefore concluded that the respondents violated §1-225(c), G.S.

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

1. Henceforth, the respondents shall strictly comply with the requirements of §1-225(c), G.S.

Approved by Order of the Freedom of Information Commission at its regular meeting of October 9, 2024.

Jennifer M. Mayo
Acting Clerk of the Commission

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APR 20 2026
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Marc:

According to this opinion by the Freedom of Information Commission, should Planning and Zoning hold an "informal discussion" the topics to be discussed must be placed on the agenda. See attached.

Sharon