



## HISTORIC DISTRICT COMMISSION

2 Fairgrounds Road  
Nantucket, Massachusetts 02554  
[www.nantucket-ma.gov](http://www.nantucket-ma.gov)

**Commissioners:** Kristine Glazer (Chair), Diane Coombs (Vice-chair), Ray Pohl, John McLaughlin, Abby Camp  
**Associate Commissioners:** Val Oliver, Matthew Kuhnert **Staff:** K Bradford

### ~~ MINUTES ~~

**Wednesday, September 7, 2016**

Public Safety Facility, 4 Fairgrounds Road, Training Room – 4:30 p.m.

Called to order at 4:32 p.m.

Staff in attendance: K. Bradford, Administrative Specialist; John Giorgio, Esq., Town Counsel  
Attending Members: Glazer, Coombs, Pohl, Camp, Oliver, Kuhner  
Absent Members: McLaughlin  
Late Arrivals: None  
Early Departures: None

Agenda adopted by unanimous consent.

#### I. PUBLIC COMMENT

None

#### II. MEETING WITH TOWN COUNSEL TO DISCUSS THE OML COMPLAINT FILED BY LINDA WILLIAMS ON AUGUST 22<sup>ND</sup>, 2016 AND THE WILLIAMS PUBLIC RECORD REQUEST

1. Review of proposed response to Open Meeting Law Complaint

Sitting: Glazer, Coombs, Pohl, Camp, Oliver, Kuhner

Recused: None

Documentation: Email from Giorgio to Glazer dated 9/4/16 – includes Draft to Williams open Meeting Law Complaint – {herein labeled as Exhibit A}

Discussion: **Giorgio** – Since we met last week, he has drafted the proposed response. The response is due on September 13<sup>th</sup>. He plans to finalize the letter tomorrow (9/8/16) and send in. Regarding the Public Records request – she [Williams] received all the documents. She’s [Williams] indicated all documents have not been produced. Each individual member of HDC was required to produce all documents – if anything comes to light, he will forward to the requestor. He’s not going to engage in dialogue with her [Williams] and advises no one should. We have an obligation to produce. If she doesn’t believe she has everything, I don’t know what to do about that.

**Coombs** – There were a couple issues you were concerned about. Doesn’t understand why an answer was made about agendas. They’ve [agendas] have always been done this way, the fourteen (14) years she’s been on the Board. She [Williams] was doing the agenda for the past nine (9) years, what have we done wrong?

**Pohl** – Fast forwarded four (4) hours of CD in his car to finally get to the last three (3) minutes of the 18<sup>th</sup> of July. Sent this to Giorgio re: what had been said.

**Giorgio** – If you read her complaint it is a bit misleading. Complaining about the agenda for 3 Old Farm – Said it was just 3 Old Farm – that description is more than detailed. It was on three (3) different agendas. First time it was quite detailed – indicated “Discussion of request for removal from PLUS”. Two subsequent meetings, same thing addressed “BOS Letter” same description should have been carried over. If this was the first time someone was picking this up, it is not adequate notice to the public. In the future, endeavor to carry over the same description. There will be instances where more detail should be included.

**Coombs** – She [Williams] had a letter in the Inquirer & Mirror and there were charges from her about how bad we were. The Editor stated there were three (3) people present when Ms. Williams was asked questions. Answer was as it should have been and her [Williams] statement was incorrect.

**Giorgio** – We deal with the facts, four corners of the complaint. All we have to and should do. [Deal with] the allegations in the four corners of her complaint.

**Coombs** – If it goes to the Attorney General and AG says HDC is not guilty – is that the end or do we deal with it for a long time?

**Giorgio** – If violations are acknowledged, do not repeat violations. We disagree with violations and imposing fines. Dispositions made of prior complaints based upon training we're going to do. Be more diligent and careful. Follow advice and training and there won't be any more violations.

**Oliver** – When are we doing that [training]?

**Giorgio** – Training can be scheduled when it is convenient for the Board.

**Glazer** – If a Board Member recuses – are we suppose to go to Town Hall and record?

**Giorgio** – No, you don't have to do that. [The Board] should do ethics training. Financial Interest is not allowed to participate- step down from the Board and don't participate and never participate. If you have a legal conflict of interest in appearance, you do have to file a disclosure form that there isn't a legal conflict – only in appearance. Sometimes Board Members recuse due to being uncomfortable. Call the Ethics Commission or call me if you're uncertain – Address this in the letter at the end. Recuse doesn't mean conflict. If there is a conflict you have to recuse yourself. Don't want appearance of conflict; recuse yourself.

**Coombs** – Was there a law? Arch and restoration member on the board – made decision in meantime, then they were hired by the applicant.

**Giorgio** – Same matter, if its fact specific, for former municipal employees there are prohibitions to represent any party on same the same matter. Look at specifically to give advice. Ethics commission is available for you to call anytime and confidentially answers questions. Does not protect in the future going forward. You have a right as municipal employee for counsel to draft an opinion. The Town Clerk and Ethics Commission has thirty (30) days to agree or not – follow the opinion – okay on that matter. They also might call you and tell you to recuse.

**Glazer** – Questioned if they have to state why they are recusing.

**Giorgio** – No. Get up and stay in same room – come back to your seat when the next agenda item is called. Asked if there were any questions or concerns about the draft answer.

**Pohl** – Commented the draft was fabulous. Immediate things taken off table with the thirty (30) day time lapse. Verbal rebuttal and technicalities so to speak – the real story.

**Giorgio** – Confirmed the real story was set straight. Questioned Glazer about response to allegations.

**Glazer** – Doesn't want that in there then. No idea what she's talking about.

**Pohl** – States if that was said about him, he'd love a document that says it's out of order.

**Giorgio** – States he and Glazer have talked about this. He doesn't think there is a conflict at all. Based on explanation he doesn't see an issue. If the matter comes before the board – a 23B3 Disclosure form filed with the Town Clerk will allow [Glazer] to participate if she wants.

**Glazer** – Confirms this action shows “I know this person, but can distance myself” and file with Town Clerk. Confirms it is okay to take that [last] paragraph out.

**Giorgio** – There was an issue with turning the tape off and everyone [the board] recognized that and doesn't think it was intentional. When things like this happen it's best to fess up and move on.

**Glazer** – In the future if someone brings something up, she will state it is not on the agenda and there is to be no discussion.

**Giorgio** – Confirms Glazer's statement is correct. Advises if meeting is adjourned and the commission is overheard talking, Glazer must tell them it is inappropriate and not to talk anymore.

**Coombs** – Commissions comments? Only talk re: what's on the agenda or something else?

**Giorgio** – Question or request i.e. concerned about property, seen things going on and put it on next agenda. Don't have a substantive conversation about it.

**Glazer** – Gives an example of Diane saying to her “Concerned about a property” I would then put it on the agenda.

**Pohl** – States enough information has to be conveyed to know what the item is about.

**Giorgio** – States he doesn't know what items are being anticipated. Several years ago, motion made by commission to name a new chair. Chair didn't anticipate topic and it was okay. i.e. 112 Cranberry Lane – don't like what's going on.

**Coombs** – Confirms it is okay to bring up to talk about in next meeting.

**Giorgio** – Confirms Coombs statement. Reiterates to not engage in conversation.

**Coombs** – Raises emergency situations, i.e. Marine Lumber

**Giorgio** – Clarifies this emergency situation being after the fire.

**Coombs** – Confirms the emergency situation was after the fire and that they needed something right away – only to find out it was signed off before it even got to them [HDC].

**Giorgio** – 48 hours notice is required, but in short-term emergency situations, i.e. ‘Sconset Bluff –

post as soon as practical.

**Glazer** – States she’s pretty sure we [HDC] posted for Marine Home.

**Coombs** – Stated someone else signed off – not HDC.

**Kuhner** – Questions if a member wishes to propose “Next week consider 112 Cranberry” but doesn’t provide enough info, if it is okay for the Chair to request more information.

**Giorgio** – Confirms it is okay for Chair to ask member for more information to add agenda item.

**Pohl** – Questions if two members having discussions of a particular item causes a violation.

**Giorgio** – No, two members having discussions of a particular item does not cause a violation.

Also, an email can be sent to Chair, just don’t get in discussion with the substance of it. Re: public comment – he doesn’t recommend engaging in dialect with them.

**Pohl** – Confirms the Board does not respond generally to public comment.

**Glazer** – Confirms protocol for something not on agenda. Page four (4) – Ray thought we should answer – doesn’t matter to me – don’t think it needs to stay there. Didn’t review file – went to go type a letter. Falls outside 30 day thing – questions why are we responding.

**Giorgio** – Thought you all did.

**Pohl** – When public.

**Giorgio** – ASAP sent

**Pohl** – Going on public record, the paper will get it and set the record straight; that we’re not just getting off on technicality.

**Glazer** – Good point.

**Giorgio** – Could be nice, a lot of OML complaints out there. Just because she [Williams] says it doesn’t make it true, i.e. allegations re: alternates. Request motion from the board to authorize sending letter, with one (1) change and to remove the last paragraph.

**Coombs** – School and Hospital are big jobs. Glazer wanted everyone’s feelings – alternate didn’t vote, but did talk about it.

**Giorgio** – Agrees with alternates discussing. They may be sitting on these in the future.

**Motion to authorize Attorney John Giorgio to submit letter as amended.** (made by: Pohl)

(seconded by: Coombs)

Carried unanimously

Action

Vote

<b>VIII. OTHER BUSINESS</b>	
Approve Minutes	None
Review Minutes	None.
Other Business	Discussion of scheduling training sessions.
Commissioner Comments	None

Motion to Adjourn: 5:22 p.m.

Submitted by:

K Bradford

Administrative Specialist

**John Giorgio**

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**From:** John Giorgio  
**Sent:** Sunday, September 04, 2016 9:25 AM  
**To:** klglaizer@gmail.com  
**Cc:** 'Libby Gibson' (LGibson@nantucket-ma.gov); Gregg Tivnan (gtivnan@nantucket-ma.gov)  
**Subject:** Drafft Response to Williams Open Meeting Law Complaint  
**Attachments:** KP-#563040-v1-NANT\_HDC\_-\_Response\_to\_Williams\_OML\_Complaint.DOCX

Dear Kristine:

I hope you are having a nice holiday weekend and hopefully our visitor from the South will not been too problematic.

Attached please find a draft response to the Williams Open Meeting Law Complaint. I have blind copied the other members of the Commission which will prevent anyone from replying to all.

I would ask that each member of the Commission review the draft response so that they will be ready to discuss this matter at the meeting on Wednesday. The Commission should be prepared on Wednesday to vote on adopting the letter with or without edits.

I would remind everyone not to discuss the attached draft with each other prior to the meeting, but rather to reserve their comments until the meeting.

If you have any questions please do not hesitate to contact me.

John

*Kopelman and Paige is now* KP | LAW

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DRAFT

September 8, 2016

Jonathan Sclarsic, Esq.  
Director, Division of Open Government  
Office of the Attorney General  
One Ashburton Place  
Boston, MA 02108

Re: Town of Nantucket Historic District Commission Response to August 23, 2016 Open Meeting Law Complaint filed by Linda Williams

Dear Mr. Sclarsic:

This firm serves as Town Counsel to the Town of Nantucket. On August 23, 2016, the Nantucket Town Clerk received an Open Meeting Law Complaint filed against the Nantucket Historic District Commission (hereinafter referred to as the "HDC") by Linda Williams, a copy of which is enclosed as "Exhibit 1".

The HDC discussed this matter with Town Counsel at its August 29, 2016 and September 7, 2016 meetings. At those meetings, the HDC acknowledged receipt of the complaint, discussed the specifics and authorized the undersigned counsel to submit this response. The Complaint alleges that the HDC's meetings notices and minutes were deficient on several occasions. The Complaint also alleges that at certain times, the HDC improperly deliberated on matters within its jurisdiction, during and outside of public meetings. The undersigned counsel conducted an inquiry into the merits of the allegations made in the Complaint, on behalf of the HDC. In relation thereto, I have reviewed relevant agendas, minutes and video recordings of HDC meetings, as well as certain email correspondence between HDC members. The substantive responses in this letter are based on my understanding of the allegations, pursuant to my review of the aforementioned items and my discussions with the HDC. Furthermore, the HDC approved a draft of this letter at its meeting on September 7, 2016. I will respond to each allegation in the same format as Ms. Williams drafted the Complaint.

Before addressing the substance of the Complaint, the HDC respectfully requests that no action be taken as to certain allegations in the Complaint which are untimely. Pursuant to G.L. c. 30A §23, complaints alleging violations of the Open Meeting Law must be filed with the public body within thirty (30) days of the alleged violation or within 30 days from the date that the violation occurred. The Attorney General has determined that if the violation occurred at a posted meeting of the public body at least 48 hours prior to the meeting, the violation is considered to be generally discoverable. In this regard, Ms. Williams alleges that violations occurred on July 12, 2016, July 13, 2016, July 19, 2016, July 21, 2016, and July 22, 2016. The Complaint was not filed with the Town Clerk, however, until August 23, 2016, well after the time permitted by statute. Therefore, while the HDC has chosen to respond substantively to these allegations, they should all nevertheless, be dismissed as untimely. In the same vein, the HDC requests that no action be taken

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as to certain vague, general and ambiguous allegations in the complaint where violations were “reportedly” witnessed and/or alleged by unnamed persons other than Ms. Williams.

In summary, upon considering this Complaint at their August 29, 2016 and September 7, 2016 meetings, the HDC acknowledges that certain of its meeting notice entries should have been more detailed to provide greater clarity as to the scope of the discussion and that its minutes should contain a list of documents and other exhibits used at the meeting. In order to address these issues, please be advised that the HDC has initiated discussions about the best practices and procedures for drafting meeting agendas and minutes. Additionally, the Town has distributed the Attorney General’s Office Open Meeting Law Guide to all HDC Members and staff. In particular, the HDC has been made aware that the Open Meeting Law mandates that notice of all public meetings (1) “be printed in a legible, easily understandable format and shall contain the date, time and place of such meeting and a listing of topics that the chair reasonably anticipates will be discussed at the meeting,” pursuant to G.L. c. 30A, §20(b); (2) that the “list of topics shall have sufficient specificity to reasonably advise the public of the issues to be discussed at the meeting”, pursuant to 940 CMR 29.03(1)(b); (3) that the level of detail required is that which provides members of the public with sufficient information to understand what business is being transacted by the HDC and, where members of the public have an interest, to attend the relevant deliberations, pursuant to OML 2011-11; and (4) that public bodies create and maintain accurate minutes of all meetings, setting forth the date, time and place, the members present or absent, a summary of the discussions on each subject, a list of documents and other exhibits used at the meeting, the decisions made and the actions taken at each meeting, pursuant to G.L. c. 30A, §22(a). Moreover, the HDC notes that, through the Town Manager, training by Town Counsel on the Open Meeting Law will be scheduled this Fall and will be specifically geared to the HDC.

1.a. Inadequate Notice and Improperly Conducted Meeting on July 12, 2016

This alleged violation occurred more than thirty days before the Complaint was filed with the Town Clerk, and because the alleged violation took place at a properly posted meeting of the HDC, the alleged violation was reasonably discoverable on the date of the meeting. Therefore, no response by the Commission is required. The HDC acknowledges in response to other timely violations alleged in the Complaint that it will take more care in describing the subject matter of each item on future agendas.

1. b. Inadequate Notice and Improperly Conducted Meeting on August 2, 2016

The HDC disagrees with the Complaint to the extent Ms. Williams suggests that the August 2, 2016 meeting was improperly conducted and that the notice was not sufficiently detailed to inform the public that the HDC would be discussing staffing and PLUS issues, which are interrelated. In

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making this complaint, Ms. Williams has misrepresented the actual item that appeared on the agenda. The August 2, 2016 agenda item, reads, "Discussion of Request to Board of Selectmen re: PLUS Oversight and Consideration for Removal of HDC from PLUS."<sup>1</sup> A true and accurate copy of the August 2, 2016 agenda is attached hereto as "Exhibit 2". Despite Ms. Williams' assertion to the contrary, the level of detail in this meeting notice allowed the public to understand what subjects were going to be discussed so that any member of the public having an interest in said topic could attend the HDC's meeting. Moreover, while the HDC is not required to discuss every matter listed on an agenda, the meeting minutes clearly establish that the HDC did discuss this matter in detail. A true and accurate copy of the August 2, 2016 minutes is attached hereto as "Exhibit 3". Furthermore, though public participation during meetings is encouraged, it is not required under the Open Meeting Law. OML 2015-12. Rather, the Open Meeting Laws provides that "[n]o person shall address a meeting of a public body without permission of the chair, and all persons shall, at the request of the chair, be silent." G. L. c. 30A, §20(f). OML 2014-23 (the chair has discretion to determine who may speak or otherwise participate at a meeting). Therefore, there was no violation of the Open Meeting Law and, notwithstanding Ms. Williams' request, no remedial action is warranted.

1. c. Inadequate Notice and Minutes of August 16, 2016 Meeting

The HDC asserts that the same is true with respect to Ms. Williams' allegations that the August 16, 2016, meeting notice was deficit. Specifically, the Complaint alleges that on the meeting notice for the HDC's August 16, 2016 meeting, the agenda included, under "Old Business," the entry "3 Old Farm Road" and that such description was not specifically detailed to inform the public that a grading issue would be discussed. The Complaint also alleges that the entire subdivision was discussed, without providing notice to property owners. In addition, the Complaint asserts that HDC staffing was discussed, despite the topic not being listed on the agenda.

Ms. Williams' complaint is misleading because she has not accurately described how this item was listed on the agenda. In fact, the topics listed on the agenda for the HDC's August 16, 2016, meeting under "Other Business", included "Review grading & topo at 3 Old Farm Road for future applications for neighboring lots". A true and accurate copy of the August 16, 2016, agenda is attached hereto as "Exhibit 4".

The HDC states that the agenda item concerning 3 Old Farm Road was sufficiently detailed to inform the public that grading would be discussed at the HDC's August 16, 2016, meeting, such that any persons interested would have an opportunity to attend the meeting. Moreover, while this is not the proper forum for such a complaint, individual notice to each property owner within the subdivision was not required as the HDC did not conduct a public hearing.

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<sup>1</sup> "PLUS" refers to the Department of Land Use Services which is a department within Town Administration.

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In this section of her Complaint, Ms. Williams also states that the topic “Board of Selectmen letter” which was listed on the August 16, 2016, agenda was not sufficiently detailed to satisfy the notice requirements of the Open Meeting Law. The HDC was continuing its discussion of PLUS oversight that was properly noticed and discussed at its August 2, 2016, meeting. (See item 1.b above.) The HDC acknowledges that the topic “Board of Selectmen letter” could have been more detailed to provide greater clarity to inform that public that the HDC would be continuing its August 2, 2016, deliberations of HDC staffing and PLUS. See, Exhibit 2 (August 2, 2016, meeting notice listing “Discussion of Request to Board of Selectmen re: PLUS Oversight and Consideration for Removal of HDC from PLUS”). While this notice entry, at least arguably, did not provide as much information as it should have, the HDC submits that it has acted to cure that shortcoming and will endeavor to provide sufficient detail on its meeting notices and, where deliberations are being continued, will carry forward detailed entries from previous agendas.

The Complaint further asserts that sample job descriptions were provided at the HDC’s August 16, 2016, meeting but were not included in the meeting minutes. The HDC recognizes that the Open Meeting Law requires that public bodies create and maintain accurate minutes of all meetings, setting forth, among other requirements, a list of documents and other exhibits used at the meeting. G.L. c. 30A, §22(a). At a duly noticed meeting on August 29, 2016, the HDC directed staff to add “Job Description for HDC positions in other jurisdictions”, under the list of documents discussed in the August 16, 2016, meeting minutes and to attach the job description as part of the official record. A true and accurate copy of the August 16, 2016, meeting minutes is attached hereto as “Exhibit 5”.

Accordingly, no further remedial action needs to be taken with respect to these allegations.

#### 2. a. Alleged Improper Deliberations on July 13, 2016

The Complaint alleges that on July 13, 2016, three members of the five member HDC met and engaged in improper deliberations about applications that were to be discussed at the HDC’s July 19, 2016, meeting. Because this alleged violation did not occur at a properly posted meeting, the HDC is responding to this allegation despite the fact that the alleged violation occurred more than 30 days prior to the filing of the Complaint.

The HDC denies any improper deliberations took place under the Open Meeting Law. Given the broad and sheer scope of applications received by the HDC, its limited staff and inadequate meeting times, some individual board members have determined that it is necessary to review applications in advance of its meetings. Because the application files are official records, the HDC staff requires that the files be reviewed in the PLUS Office. The HDC asserts that three of its

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members found themselves present in the same room in the PLUS Office on July 13, 2016, to review applications, but denies any allegations that a quorum, i.e., three members, met and deliberated. In fact, as soon as the third member entered the room, the Chair removed herself to another work station to continue her review of the application files. At no time was there any discussion among a quorum of the HDC as to the merits of the applications being reviewed or other HDC business.

The Open Meeting Law requires that all meetings of a public body be properly noticed and open to members of the public, unless an executive session is convened. See G.L. c. 30A, §§ 20(a)-(b). “The Law’s purpose is ‘to eliminate much of the secrecy surrounding deliberations and decisions on which public policy is based.’” Swansea Board of Selectmen, 2013 Mass. AG LEXIS 127 (March 11, 2013; quoting, Ghiglione v. School Committee of Southbridge, 376 Mass. 70, 72 (1978). “A ‘meeting’ is defined in relevant part, as ‘a deliberation by a public body with respect to any matter within the body’s jurisdiction.’” Id. citing, G.L. c. 30A, § 18. “The Law defines ‘deliberation’ as ‘an oral or written communication through any medium, including electronic mail, between or among a quorum of a public body on any public business within its jurisdiction; provided however, that ‘deliberation’ shall not include the distribution of a meeting agenda, scheduling information or distribution of other procedural meeting or the distribution of reports or documents that may be discussed at a meeting, provided that no opinion of a member is expressed.’” Id.; see also, Wakefield Lake Quannapowitt Committee, 2016 Mass. AG Lexis 60 (April 12, 2016).

In this case, no deliberations by a quorum of HDC members involved in the administrative task of reviewing the applications took place.

#### 2.c. Improper Deliberations at the July 26, 2016 Meeting

The Complaint alleges that on July 26, 2016, the HDC intentionally violated the Open Meeting Law when it continued to deliberate on a matter within its jurisdiction after the closing of a duly noticed meeting. In discussions with Counsel at its August 29, 2016, which was a public meeting, the members of the HDC acknowledged the essential facts but could not collectively recall the substance of the off line discussion. The HDC recognizes that while a violation may have occurred, it was not intentional and asserts that it immediately took the requisite action to cure any purported improper deliberations.

Specifically, the HDC’s video recording of the July 26, 2016 meeting establishes that towards the end of the meeting, one member stated, “There’s something I need to ask you all before we finish, I mean before we go out”, another member asked, “Do we need to go offline?” and the chair responded, “Yes, it’s not on the agenda”. The meeting was adjourned, and the video and audio tapes were turned off. Thereafter, at least one member of the HDC (Mr. Pohl) recalls that a quorum of the HDC commenced a brief discussion about staffing and PLUS. Realizing its mistake,

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the HDC, acting in good faith, promptly issued a meeting notice, which included the topic "Discussion of Request to Board of Selectmen re: PLUS Oversight and Consideration for Removal of HDC from PLUS" on the agenda for the HDC's August 2, 2016 meeting. Exhibit 2. During the August 2, 2016 meeting, the HDC made its previous discussion public in an attempt to cure the violation. Therefore, no further remedial action needs to be taken. Exhibit 3.

2.d. Improper Deliberations at the HDC Meeting on August 2, 2016

Ms. Williams also asserts that on August 2, 2016, prior to opening the HDC's duly noticed meeting, and before the video and audio tapes were turned on, one member began discussing a property within the HDC's jurisdiction while a quorum of its members were present. Ms. Williams' Complaint further alleges that said member is also an abutter to the property and should have recused herself from participating in any conversations concerning it. As an initial matter, conflict of issue concerns are beyond the scope of the Open Meeting Law and therefore, this is not the proper forum to raise such a complaint.

According to the member in question (Ms. Combs), when she left her house to attend the meeting on August 2, 2016, she noticed that the house at 11 Fayette Street had been torn down that morning. Perceiving this to be an enforcement matter, she made a brief comment to the other HDC meeting as they were taking their seats and before the meeting began, merely to inform them that the house had been torn down. Ms. Williams's comments that the Chair had the responsibility to control the meeting by stopping the conversation immediately. In fact, however, the Chair of the HDC did just that. Chairman Glazer states that as soon as this matter was raised, she promptly noted that the meeting had not yet commenced and therefore, any discussion of this topic would not be appropriate under the Open Meeting Law. No further deliberation of this matter occurred. As HDC members were advised to be mindful to avoid any discussion on issues within its jurisdiction outside of meetings and not on properly posted agendas, no additional remedial action needs to be taken.

2. e. Inadequate Notice and Minutes and Improper Deliberations at the August 9, 2016 Meeting.

The Complaint alleges that the issue of HDC staffing and PLUS was not properly noticed on the meeting agendas for the July 26, 2016, July 28, 2016, August 2, 2016 and August 9, 2016 HDC meetings. The Complaint also alleges that the letter to Board of Selectmen discussed at the HDC's August 9, 2016 Meeting was not properly listed in the meeting minutes nor, was the public asked to comment on said letter. Ms. Williams further claims that no discussion of said letter was had at the July 26, 2016, July 28, 2016, and August 2, 2016 and therefore, asserts that the HDC must have engaged in improper deliberations. The HDC denies each of these allegations.

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As previously noted, the HDC Chair did not reasonably anticipate that the topic of HDC staffing and PLUS would arise at the July 26, 2016 meeting and therefore, did not include notice in the agenda. Again, however, the HDC acted in good faith to cure any perceived violations of the Open Meeting Law with respect to the July 26, 2016 meeting agenda. And, although the Chair did not include this topic in the meeting notice for the July 28, 2016 agenda, as it was not anticipated that it would be discussed at least forty-eight hours before the meeting, the HDC did confirm that it should be included in the agenda for the August 2, 2016 meeting. G.L. c. 30A, § 20(b). In fact, the July 28, 2016 HDC meeting minutes provide:

PLUS and Town Counsel will be at the August 2 HDC meeting. [Member Pohl] thinks it is important that Town Counsel attend and to include in the discussion the idea of the staffing of HDC being taken out of PLUS and established as a separate entity. Doing that requires a letter to the Board of Selectmen. Member Pohl asked this be added to the August 2 agenda.

(Emphasis added). A true and accurate copy of the July 28, 2016 meeting minutes is attached hereto as "Exhibit 6". The August 2, 2016 agenda item accordingly, reads, "Discussion of Request to Board of Selectmen re: PLUS Oversight and Consideration for Removal of HDC from PLUS" and is sufficiently detailed to allow the public to understand what subjects were going to be discussed so that any member of the public having an interest in said topic could attend the HDC's meeting. Exhibit 2. Moreover, despite Ms. Williams' claims to the contrary, the letter to the Board of Selectmen was discussed at the August 2, 2016 meeting. See Exhibit 3.

Additionally, the August 9, 2016 agenda item reads, "Board of Selectmen letter". A true and accurate copy of the August 9, 2016 agenda is attached hereto as "Exhibit 7". As already explained, the HDC recognizes that this agenda item should have been more detailed to provide greater clarity to inform that public that the HDC would be continuing its August 2, 2016 deliberations of HDC staffing and PLUS. The HDC submits that it has acted to cure such shortcoming and will endeavor to provide sufficient detail on its meeting notices and, where deliberations are being continued, will carry forward the detailed entry from previous agendas. In the same vein, the HDC also recognizes that documents used by a public body at an open session must be listed in the minutes and be part of the official record of the session. At a duly noticed meeting on August 29, 2016, the HDC directed staff to add the letter to the Board of Selectmen that was sent under the list of documents discussed in the August 9, 2016 meeting minutes and to attach the letter as part of the official record, and the meeting minutes are being updated accordingly.

Lastly, the HDC denies any allegation made by Ms. Williams that it intentionally deliberated on the letter to the Board of Selectmen outside an open meeting. Rather, the HDC admits that the letter was drafted by two of its members (Glazer and Kuhnert) who met for this purpose. The HDC

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further acknowledges that on August 5, 2016, the Chair sent an email to member Diane Coombs noting her opinion on additional matters that should be included in the letter. Similarly on August 8, 2016, the Chair then sent an email to associate member Vallorie Oliver, attaching a second version of the letter. Although the email does not indicate this, Ms. Glazer sent the email to Ms. Oliver because she had a working printer which Ms. Glazer did not. True and accurate copies of the emails are attached hereto as "Exhibit 9". As is evident from the email that was exchanged between Ms. Glazer and Ms. Coombs, as well as the email between Ms. Glazer and Ms. Oliver, no violation of the Open Meeting Law occurred because each of the communications between the two HDC members are not deliberations and further there is no evidence that serial discussions regarding the letter were conducted.

Again, the Open Meeting Law defines "'deliberation' as 'an oral or written communication through any medium, including electronic mail, between or among a quorum of a public body on any public business within its jurisdiction; provided however, that 'deliberation' shall not include the distribution of a meeting agenda, scheduling information or distribution of other procedural meeting or the distribution of reports or documents that may be discussed at a meeting, provided that no opinion of a member is expressed.'" G.L. c. 30A, § 18; see also, Wakefield Lake Quannapowitt Committee, 2016 Mass. AG Lexis 60 (April 12, 2016). Accordingly, pursuant to the explicit definition of "deliberation" under the Open Meeting Law, a quorum of the members of a public body may not use e-mail to share their ideas, feelings, opinions, beliefs, whether serially or in a single e-mail. An expression of an opinion on matters within the body's jurisdiction to a quorum is a "deliberation", even if no other public body member responds. OML 2013-186.

Here, though Ms. Coombs expressed her opinion on the letter to the Chair, such communication between two members does not constitute a quorum. In the same vein, neither does the subsequent email from Ms. Coombs to Ms. Oliver, in which she merely sends a second draft of the email to be printed. Nevertheless, the HDC has directed staff to add the emails to the list of documents for the August 9, 2016 meeting and the minutes are being updated accordingly.

### 3. Alleged Serial Meetings on July 21 and 22, 2016.

The allegations in this section of the complaint occurred more than 30 days prior to the Complaint. Nevertheless, the HDC will add the emails in question to the list of documents for the July 26, 2016 meeting and will update the minutes accordingly.

Although this response to an Open Meeting Law Complaint is not the appropriate forum to resolve allegations of conflict of interest issues, the complainant insinuates that because the Chair had previously recused herself from the White Heron matter, it was improper for her to speak to the matter at the July 26, 2016 meeting, stating that the Chair "should have kept her hands clean." This

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particular comment is very unfortunate because it assumes that the Chair had a legal conflict of interest merely because she recused herself from a prior discussion. Board members recuse themselves all the time for various reasons that don't necessarily involve a legal conflict of interest under G.L. c. 268A, and the Complainant has provided no evidence to support her insinuation. As the former Chair of the HDC herself, Ms. Williams should have taken more care in making this allegation without the apparent knowledge of the circumstances.

If you have any questions in this regard, please do not hesitate to contact me.

Very truly yours,

John W. Giorgio

JWG/NJC

Enc.

cc: Board of Selectmen  
Town Manager

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