



COMMONWEALTH OF KENTUCKY
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23-OMD-017

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In re: Victoria Poma/City of Williamsburg Board of Adjustments

Summary: The City of Williamsburg Board of Adjustments (“the Board”) violated the Open Meetings Act (“the Act”) at a special meeting conducted on November 15, 2022 when it discussed matters not appearing on the posted agenda.

Open Meetings Decision

On November 16, 2022, Victoria Poma (“the Appellant”) submitted a complaint objecting to the Board’s conduct at its meeting the previous day. Specifically, the Appellant alleged the Board voted to grant a proposed conditional use permit, but the agenda for the meeting stated the Board would be voting on an application for a “variance.” The Appellant alleged the Board violated KRS 61.823(3) for discussing and taking action on an item not on the agenda.¹ In a timely response, presumably on behalf of the Board, the Mayor of Williamsburg agreed to “remedy the alleged violation” by having the Board conduct a new meeting to vote on the proposed conditional use permit.

On November 23, 2022, the Planning and Zoning Commission (“Commission”) posted notice of a special meeting scheduled for December 8, 2022, at which the

¹ The Appellant also alleges the Board violated the notice provisions of KRS 100.237(6), which requires the Board to issue notice of a hearing to consider any application for a conditional use permit to various public officials and neighboring property owners 14 days before the hearing. The notice provisions of the Act are separate from the notice requirements of KRS 100.237(6). A violation of KRS 100.237(6) would not necessarily constitute a violation of KRS 61.823. In the context of an open meetings appeal, the Office shall decide only whether the provisions of KRS 61.805 to 61.850 were violated, and cannot express an opinion on whether other alleged violations of law occurred. See KRS 61.846(2).

application for a conditional use permit would be considered.² The Board also issued a notice scheduling a special meeting for December 20, 2022, at which the issue would be considered for final approval. However, the December 20, 2022 meeting was ultimately canceled.

The Appellant initiated this appeal on January 13, 2023. She claims to have received the Board's notice for its meeting scheduled for December 20, 2022, but not the Commission's notice of its meeting scheduled for December 8, 2022. She claims the Board's procedures for providing notice are inadequate because the Board does not always post notice of meetings on Facebook or via "Reach text messages," a text message notification system used by the City. Rather, the Board provides notices of such meetings to the local newspaper, which the Appellant claims does not reach the majority of citizens.³

As an initial matter, the Office must assure itself of its jurisdiction to consider this appeal. It is not clear from this record to whom the Appellant sent her November 16 complaint. That is significant, because the Appellant must first send her complaint "to the presiding officer of the public agency suspected of the violation" before initiating an appeal to the Office. KRS 61.846(1); *see also* 22-OMD-177. Although the complaint is not addressed to any particular person, the Mayor responded. The Mayor, however, is not the presiding officer of the Board. *See* KRS 100.217(3) (the Mayor appoints members to the Board but is not himself a member); KRS 100.217(10) (the Board must select a chairperson from its members).⁴ Regardless, KRS 61.846(1) also states the "response shall be issued by the presiding officer, or under his authority, and shall constitute final agency action." Thus, even if the Mayor is not the presiding officer of the Board, he may still act under the presiding officer's "authority" to issue the Board's response. Because the Board does not claim on appeal that the Mayor was acting without the authority of the Board's presiding officer, the Office concludes the Appellant has satisfied the requirements of KRS 61.846(1) with respect to the alleged violations at the meeting on November 15, 2022. However, the Appellant did not first submit complaints to the Board regarding its alleged violations

² The Appellant provides a copy of the notice posted for the December 8 meeting, but the notice itself lacks a date. The Appellant also provides a screenshot of the local newspaper's website containing a copy of the notice. That article was posted on November 23, 2022.

³ At least 24 hours before the special meeting, "written notice shall be delivered personally, transmitted by facsimile machine, or mailed to every member of the public agency as well as each media organization which has filed a written request, including a mailing address, to receive notice of special meetings." KRS 61.823(4)(a). "[W]ritten notice shall also be posted in a conspicuous place in the building where the special meeting will take place and in a conspicuous place in the building which houses the headquarters of the agency." KRS 61.823(4)(c). Thus, the Act does not require the Board to publish notice of the special meeting in the local newspaper or to give notice via Facebook or text messages.

⁴ Nor is it readily apparent that the Mayor has the authority to bind the Board and order it to conduct its meeting over again, as the Mayor suggested would be done to remedy the Appellant's complaint.

with respect to the planned December 8 or December 20 meetings. Accordingly, the Office lacks jurisdiction to consider the Appellant's claim that the Board violated the Act on those occasions and dismisses those claims without prejudice.⁵

In her November 16 complaint, the Appellant alleged the Board violated KRS 61.823(3) on November 15 when it discussed an application for a conditional use permit—a subject not included on the November 7 notice of “the meeting.” Ordinarily, a public agency must establish its schedule for regular meetings, and any meeting conducted at a time not established in the regular schedule is a “special meeting” under KRS 61.823. But under KRS 100.221(1), “[e]ach board of adjustment shall conduct meetings at the call of the chairman who shall give written or oral notice to all members of the board at least seven (7) days prior to the meeting, which notice shall contain the date, time and place for the meeting, and the subject or subjects which will be discussed.” Thus, the specific statute applying to boards of adjustment meetings contemplates ad hoc meetings scheduled at the call of the chair, with notice required to be delivered seven days before that meeting. In other words, KRS 100.221(1) makes *every* meeting of the Board a “special meeting” because the Board is not required to maintain a regular schedule of meetings.

Because there is no evidence in the record that the Board has a regular schedule of meetings, and KRS 100.221(1) indicates every Board meeting is a special meeting, the Office concludes that the November 15 meeting constituted a “special meeting” within the meaning of KRS 61.823. Accordingly, the Board was limited to discussing only those matters appearing on the agenda for the special meeting. KRS 61.823(3).⁶ Because the Board discussed a matter not included on the agenda it posted for the special meeting, it violated the Act.

A party aggrieved by this decision may appeal it by initiating action in the appropriate circuit court pursuant to KRS 61.846(4)(a). The Attorney General shall be notified of any action in circuit court, but shall not be named as a party in that action or in any subsequent proceedings. The Attorney General will accept notice of the complaint e-mailed to OAGAppeals@ky.gov.

⁵ If an agency agrees to remedy the alleged violation, and the complainant believes those attempts are “inadequate,” KRS 61.846(3), the Appellant may seek this Office's review “as if the public agency had denied *the original complaint*,” KRS 61.846(3)(c) (emphasis added). Thus, even though the Appellant claims the Board's failure to conduct the remedial meetings constitutes an inadequate attempt to remedy her complaint, KRS 61.846(3)(c) nevertheless restricts the Office's review to “the original complaint.” If a complainant believes new violations occurred at subsequent meetings, she must first send a complaint to the presiding officer alleging those new violations and proposing a new remedy. KRS 61.846(1).

⁶ This analysis harmonizes both KRS 61.823(3) and KRS 100.211(1), which both limit discussions to the topics accompanying proper notice. *See* KRS 61.850 (The Act “shall not be construed as repealing any of the laws of the Commonwealth relating to meetings but shall be held and construed as ancillary and supplemental thereto”). The difference between the two statutes is that the Board must issue proper notice seven days in advance of such meetings, as opposed to 24 hours before them.

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Distributed to:

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