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24-OMD-031

February 8, 2024

In re: Victoria Poma-Crisp/Williamsburg Board of Zoning Adjustment

Summary: The Williamsburg Board of Zoning Adjustment (“the Board”) violated the Open Meetings Act (“the Act”) when it failed to issue a written response to a complaint within three business days. However, the Office cannot resolve the factual dispute concerning whether the Board improperly entered closed session or discussed topics that were not included on the agenda of its special meeting.

Open Meetings Decision

On December 5, 2023, Victoria Poma-Crisp (“Appellant”) submitted a written complaint to the presiding officer of the Board¹ alleging it violated the Act at its December 4, 2023, meeting by entering closed session without complying with KRS 61.815 and by taking a vote while in closed session. The Appellant then submitted a second complaint on December 11, 2023, alleging the Board violated the Act by discussing topics that were not on the agenda for its special meeting earlier that day. She also complained that the Board had failed to respond to her first complaint. Having received no response from the Board by January 29, 2024, the Appellant initiated this appeal.

Upon receiving a complaint alleging a violation of the Act, a “public agency shall determine within three (3) [business] days . . . after the receipt of the complaint whether to remedy the alleged violation pursuant to the complaint and shall notify in writing the person making the complaint, within the three (3) day period, of its decision.” KRS 61.846(1). On appeal, the Board admits it failed to respond to the Appellant’s complaints. Thus, the Board violated the Act.

¹ The officer that presided over the meetings resigned shortly thereafter. Nevertheless, the Appellant’s complaint was address to the presiding officer of the Board, and therefore, the Board had a duty to timely respond to the complaint.

Under KRS 61.810(1), “[a]ll meetings of a quorum of the members of any public agency at which any public business is discussed or at which any action is taken by the agency, shall be public meetings, open to the public at all times[.]” If a public agency intends to discuss certain topics that are exempt under KRS 61.810, it must notify the public in attendance that it is entering closed session, state the exemption on which it relies and the general nature of the topics to be discussed, and vote to enter closed session following a motion. KRS 61.815(1). Here, the Appellant claims the Board chair announced at the December 5 meeting that the “public portion of the meeting had concluded.” She further claims there was a motion and vote to take final action while the Board was still in closed session. However, the Board claims it did not enter closed session and the public was not required to leave the room. Rather, the Board held a “public hearing” at which members of the public could comment on the topic before the Board, and then the Board announced that the “public hearing” portion of the meeting had concluded. Thus, the Board claims it did not enter closed session, but rather, concluded the portion of the meeting at which public comments would be received, and then discussed whether to take final action on the proposed topic in full view of the public attending. The Office cannot, in the context of an appeal under the Act, resolve factual disputes between the parties. *See, e.g.*, 23-OMD-103; 10-OMD-135; 08-OMD-040. Accordingly, the Office cannot find that the Board engaged in improper closed-session discussions when it claims the discussions were conducted in full public view.

Similarly, the Office cannot resolve the dispute between the parties about whether the topics the Board discussed at its December 11, 2023, meeting were germane to the topic on the agenda. The Appellant claims the only topic on the agenda was her appeal to the Board, in which she asked it to reconsider a permit it had just granted. She claims, however, that the Board began discussing “recent ordinance amendments for the width and area of a lot, which were not a component of the appeal.” The Board, in contrast, claims the ordinances it discussed were relevant to the appeal at issue. Neither party alleges the Board discussed whether to *amend* its ordinances, which would clearly not be germane to the topic of an appeal regarding a specific permit. Rather, the dispute between the parties is really about whether the Board’s reliance on the recently amended ordinances supported its determination to deny the Appellant’s appeal, not whether the Board discussed public business that was not properly noticed on the agenda. The Office will not resolve ancillary legal disputes in the context of an appeal under the Act. *See, e.g.*, 17-OMD-143 n.4 (declining to determine whether a conflict of interest existed between the county attorney and the public agency); 16-OMD-030 (declining to determine whether the

public agency complied with the local ethics code). Thus, other than concluding that the Board violated the Act when it failed to timely respond to the Appellant's complaints, the Office cannot find that the Board violated the Act.

A party aggrieved by this decision may appeal it by initiating an 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 emailed to OAGAppeals@ky.gov.

Russell Coleman
Attorney General

/s/ Marc Manley
Marc Manley
Assistant Attorney General

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Distributed to:

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