

**STOCKBRIDGE SELECT BOARD MEETING MINUTES**  
**Thursday, March 19, 2020**  
**9:00 a.m.**  
**TOWN OFFICES, 50 MAIN STREET**

**Present:**

Terry Flynn, Roxanne McCaffrey and Mark Webber

**Call to Order:**

Terry called the meeting to order.

**Agenda:**

First Mark announced that in response to the Coronavirus Pandemic, the Town has formed a public health and safety emergency task force committee comprised of the Chief of Police, Fire Chief, the three Selectmen, Town Administrator, Dr. Charles Kenny the Board of Health Chair, and the Town's emergency management director. The committee has met twice and will continue to meet weekly.

The VHB discussion on the two downtown intersections will be postponed until a good method of presentation can be determined.

Mark recommended that the Annual Town Meeting and Town Elections be postponed until June 15<sup>th</sup> and 16<sup>th</sup>. He stated that all is subject to change, including the warrant deadlines.

Mark also noted that a drop box will be placed outside of the Town Offices for people to drop off payments and deliveries as the Offices are currently closed to the public.

Regarding the open meeting laws and in speaking with CTSB, the Board meetings will be recorded and become available on the website within 24 hours. Comments can be directed by email to [selectmen@townofstockbridge.com](mailto:selectmen@townofstockbridge.com).

The Town Administrator Search Committee has completed their work and Bronly Boyd will present recommendations on their two finalists to the Board in writing. Interviews will follow. Roxanne said that the government may soon be sending checks for economic relief, but for residents to be aware that scams may be coming out of this situation and to please be cautious. She also said that the Chamber of Commerce has very kindly put out a list of our local businesses and hours. Roxanne listed the hours and contacts for The Lost Lamb, The Main Street Café, the Red Lion Inn and Once Upon a Table. Closed until further notice are Stockbridge Coffee and Tea and Michael's Restaurant. Nejaimes Wine Cellar and the local convenience store are still both open. Both Price Chopper and Big Y have changed their hours and are open early for seniors 60 and over. Roxanne urged people to not panic and to not stock pile needed supplies in their homes. The Mass DPH website is a good source for current information on the COVID-19 Pandemic.

Terry said that they have two open meeting law complaints received regarding the February 4<sup>th</sup> meeting where the Board voted to sign the settlement agreement (Rest of f River). Terry said that they would review each complaint step by step. (Complaints attached)

The first was registered by Meghan Carlotto of Mohawk Lake Road: 1. The Selectmen committed an open meeting law violation relating to entering, deliberating and voting on the

EPA mediation. 2. It was one of five Select boards who signed the agreement; which is true. 3. There was no open meeting transparency during their vote. Terry said that this seems to be an opinion but noted that it was a posted meeting and the initial meeting before entering executive session was an open meeting; but there were no people present in the room. 4. This settlement affects the safety of the general public and wildlife ecosystems and habitats; which the Board believes to be true. 5. The settlement is a conflict of interest and that the towns have accepted millions of dollars in payouts from GE in exchange for a toxic waste dump. Terry said that this is a reference to the \$55 million in the settlement agreement to be divided up between the five towns. Roxanne said that this is stating that the negotiated payout is in some way in exchange for a toxic waste dump and this is not the case. This was a way for all of the towns, based on a percentage of the impact of this clean up, and the citizens will vote on the usage of their monies. This is not an exchange. In addition, Terry added that for a legal stand point, they were advised that there is no conflict under the State's ethic law. 6. The community believes that the Select board was pressured from GE and the EPA to make a rapid decision to accept the agreement. This again is not an open meeting law conflict. 7. She (M. Carlotto) cannot find in open meetings where they were clear about their intentions for entering mediation. Terry said the minutes of October 9, 2018, Steve Shatz explained the mediation process and identified the key issues as the sediment to be removed, where the sediment was to be trucked and disposed, therefore there was a clear statement of the intentions of the mediation at a public meeting with published minutes.. Roxanne added that it was announced at the 2018 Annual Town Meeting according to Town Counsel. 8. She (M. Carlotto) is certain that they did not reenter open meeting to share their deliberations publically or to cast their votes. A note from Town Counsel is that this was not legally required as at the time the settlement agreement was not signed by all parties and was not yet accepted by the EPA. This raises the other significant factor as a part of the context, that when the mediation was initially set up it was clearly stated that it would be confidential all the way through until the agreement was entirely completed.

The next sets of allegations were from Jennifer Andrews: 1. The complaint is filed against the Stockbridge Select Board; but also lists seven people who are not members of the Select Board. Terry said that the Select Board is subject to the complaint, not the other parties listed. 2. The complaint list violation dates of fall 2018 and February. While the fall 2018 allegations are too late to be considered, again, the minutes from October 9, 2018 explained at a public meeting, the mediation process and the problems to be dealt with. 3. The Board violated the open meeting law by entering, deliberating over and voting on mediation over litigation with GE and the EPA. Terry stated that as he understands, this allegation refers to the posting of the meetings. Mark said that this item was consistent with M. Carlotto's #1 and as in charge of the posting it was properly posted in the sense of speaking to the correct section of Mass General law under the open meeting law but he failed to specifically note the parties of the litigation. Terry added that there are times that the specific parties are not needed to be noted and that this was not intentional. 4. The Select Board and for other Select Boards signed a binding settlement agreement that has enormous impact on public health and safety. The Board agrees on this point. 5. The community was blind-sided and in distress because many of us are not in agreement. Terry said that this situation may have been much better if it had not been such an abrupt announcement when the vote had already be taken, but part of this along with the

timing was that this was a mediation, confidential and one that involved the permitting imposed on GE by the EPA; it restricted the Board from having a lot of prior discussion. Terry however said that it is understandable that people would be upset by the abrupt nature. Concerning the pressure that the Board was put under by GE and the EPA lawyers; this was just addressed and not believed to be a factor.

Mark added that essentially the only open meeting law issue was a procedural flaw to the posting and he accepted responsibility for that. There was certainly no intent to circumvent the process or to be sneaky or cute.

Roxanne added that legally the Board in this circumstance had the right to meet in executive session, to deliberate in executive session as they were dealing with a confidential mediation situation and they also had the right to vote in executive session. Again they apologize for the posting error and it won't happen again. They did not feel any pressures and it was a difficult decision, a difficult situation, it is a complex mediated agreement, they were briefed, they voted and fortunately nineteen selectmen in five towns all independently the same way. Terry added that often times with situations like this you can investigate for ones with less risk but did not feel this existed here at all. The truth was the vote could not be rescinded and the situation is that they have a leaking source of heavy contamination which is Woods Pond and this is a way to get this cleaned up.

On advice from Town Counsel, Terry said the two complaints requested that they withdraw their consent to the settlement until the public can be legally involved but the Select Board cannot withdraw its consent at this stage of the proceedings; once the Board entered into the mediation they no longer had the same freedom. A second request was to release executive session minutes from February 4<sup>th</sup> regarding this issue and this can be done. Number three, already covered assertion of pressure from GE is not an appropriate remedy for an open meeting law violation.

Terry made a motion that the Board directed Town Counsel, J. Raymond Miyares, to draft a response to both open meeting law complaints and to work with and seek approval of the chair on the content of the response. Roxanne seconded; all were in approval.

**Adjournment:**

With no further business, Terry adjourned the meeting.



The Commonwealth of Massachusetts  
Office of the Attorney General  
One Ashburton Place  
Boston, Massachusetts 02108

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**OPEN MEETING LAW COMPLAINT FORM**

**Instructions for completing the Open Meeting Law Complaint Form**

The Attorney General's Division of Open Government interprets and enforces the Open Meeting Law, Chapter 30A of the Massachusetts General Laws, Sections 18-25. Below is the procedure for filing and responding to an Open Meeting Law complaint.

**Instructions for filing a complaint:**

- o Fill out the attached two-page form completely. Sign and date the second page. File the complaint with the public body within 30 days of the alleged violation. If the violation was not reasonably discoverable at the time it occurred, you must file the complaint within 30 days of the date the violation was reasonably discoverable. A violation that occurs during an open session of a meeting is reasonably discoverable on the date of the meeting.
- o To file the complaint:
  - o For a local or municipal public body, you must submit a copy of the complaint to the chair of the public body AND to the municipal clerk.
  - o For all other public bodies, you must submit a copy of the complaint to the chair of the public body.
  - o Complaints may be filed by mail, by email, or by hand. Please retain a copy for your records.
- o If the public body does not respond within 14 business days and does not request an extension to respond, contact the Division for further assistance.

**Instructions for a public body that receives a complaint:**

- o The chair must disseminate the complaint to the members of the public body.
- o The public body must meet to review the complaint within 14 business days (usually 20-22 calendar days).
- o After review, but within 14 business days, the public body must respond to the complaint in writing and must send the complainant a response and a description of any action the public body has taken to address the allegations in the complaint. At the same time, the body must send the Attorney General a copy of the complaint and a copy of the response. The public body may delegate this responsibility to an individual member of the public body, its counsel, or a staff member, but only after the public body has met to review the complaint.
- o If a public body requires more time to review the complaint and respond, it may request an extension of time for good cause by contacting the Division of Open Government.

**Once the public body has responded to the complaint:**

- o If you are not satisfied with the public body's response to your complaint, you may file a copy of the complaint with the Division by mail, by email, or by hand, but only once you have waited for 30 days after filing the complaint with the public body. Mail may be sent to: The Division of Open Government, Office of the Attorney General, One Ashburton Place - 20<sup>th</sup> Floor, Boston, MA 02108. Emails may be sent to: [openmeeting@state.ma.us](mailto:openmeeting@state.ma.us).
- o When you file your complaint with the Division, please include the complaint form and all documentation relevant to the alleged violation. You may wish to attach a cover letter explaining why the public body's response does not adequately address your complaint.
- o The Division will not review complaints filed with us more than 90 days after the violation, unless we granted an extension to the public body or you can demonstrate good cause for the delay.

If you have questions concerning the Open Meeting Law complaint process, we encourage you to contact the Division of Open Government by phone at (617) 963-2540 or by email at



Office of the Attorney General  
One Ashburton Place  
Boston, MA 02108

Please note that all fields are required unless otherwise noted.

**Your Contact Information:**

First Name: Meaghan Last Name: Cariotto

Address: 6 Mohawk Lake Rd.

City: Glendale State: MA Zip Code: 01229

Phone Number: 413-298-4447 Ext. \_\_\_\_\_

Email: meaghan\_0721@yahoo.com

Organization or Media Affiliation (if any): \_\_\_\_\_

Are you filing the complaint in your capacity as an individual, representative of an organization, or media?

(For statistical purposes only)

Individual  Organization  Media

**Public Body that is the subject of this complaint:**

City/Town  County  Regional/District  State

Name of Public Body (including city/town, county or region, if applicable): Town Selectboard and representative to the Rest of River mediation

Specific person(s), if any, you allege committed the violation: Ernest J. Cardillo, Roxanne McCaffrey and Terry Flynn

Date of alleged violation: February 2020

Describe the alleged violation that this complaint is about. If you believe the alleged violation was intentional, please say so and include the reasons supporting your belief.

Note: This text field has a maximum of 3000 characters.

It is my belief that the Stockbridge select board committed an open meeting law violation related to entering, deliberating over and voting on, mediation over litigation with General Electric (GE) and the Environmental Protection Agency (EPA) about GE's mandated cleanup of the Housatonic River. The Stockbridge select board was one of five in Southern Berkshire County that signed a binding settlement agreement to create a toxic PCB waste dump in the Town of Lee, MA. There was no open meeting transparency during their vote. Not only does this settlement impact the health and safety of the general public for all Berkshire County residents, particularly those living in close proximity to the dump/dredging sites, but also wildlife, their habitats and ecosystems that will likely be destroyed, or at the very least disrupted. This settlement is an apparent conflict of interest that the towns involved accepted between \$1.5 and \$25 million dollars in payouts each from GE in exchange for a toxic waste dump at the expense of the welfare of the residents and wildlife. It is a belief of the community that the select boards acted under pressure from GE and the EPA to make a rapid decision and accept this agreement, which knowingly violated the trust of their constituents. I have not been able to find in open minutes where they were clear about their intentions for entering mediation. However, I am certain that they did not re-enter open meeting to share their deliberations publicly or to cast their votes, which were made in February 2020, and this constitutes a first or even possible second violation. The law that I found that I believe supports this claim is Section 21, Part A, 9, I & II, however, I am not a lawyer and am unsure if there is another law that contradicts or better supports this claim. I cannot say with certainty that the alleged violation was intentional, but it is my belief that this was kept from the public knowing there would be a large public opposition against it. Thank you for your consideration.

What action do you want the public body to take in response to your complaint?

Note: This text field has a maximum of 500 characters.

- #1. I am asking the selectboard to withdraw their consent to the settlement until the public can be properly and legally involved, and our will considered, in decisions about the fate of our river and our community.
- #2. I am asking for the release the executive session minutes of the sessions in which they deliberated and voted about this issue.
- #3. I would like an investigation to be conducted around what pressures GE, EPA, or their lawyers put on the other parties to the mediation to achieve their consent and willingly violate the trust, safety and welfare of their constituents.

### Review, sign, and submit your complaint

#### I. Disclosure of Your Complaint.

**Public Record.** Under most circumstances, your complaint, and any documents submitted with your complaint, is considered a public record and will be available to any member of the public upon request.

**Publication to Website.** As part of the Open Data Initiative, the AGO will publish to its website certain information regarding your complaint, including your name and the name of the public body. The AGO will not publish your contact information.

#### II. Consulting With a Private Attorney.

The AGO cannot give you legal advice and is not able to be your private attorney, but represents the public interest. If you have any questions concerning your individual legal rights or responsibilities you should contact a private attorney.

#### III. Submit Your Complaint to the Public Body.

The complaint must be filed first with the public body. If you have any questions, please contact the Division of Open Government by calling (617) 963-2540 or by email to [openmeeting@state.ma.us](mailto:openmeeting@state.ma.us).

By signing below, I acknowledge that I have read and understood the provisions above and certify that the information I have provided is true and correct to the best of my knowledge.

Signed: M. DeLoach

Date: 03-09-2020

For Use By Public Body

For Use By AGO





The Commonwealth of Massachusetts  
Office of the Attorney General  
One Ashburton Place  
Boston, Massachusetts 02108

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Office of the Attorney General  
One Ashburton Place  
Boston, MA 02108

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Please note that all fields are required unless otherwise noted.

### Your Contact Information:

First Name: Jennifer M Last Name: Andrews

Address: 21 East Street

City: Stockbridge State: MA Zip Code: 01262

Phone Number: 433581838 Ext. \_\_\_\_\_

Email: jendrews11@gmail.com

Organization or Media Affiliation (if any): \_\_\_\_\_

Are you filing the complaint in your capacity as an individual, representative of an organization, or media?

(For statistical purposes only)

Individual  Organization  Media

### Public Body that is the subject of this complaint:

City/Town  County  Regional/District  State

Name of Public Body (including city/town, county or region, if applicable): Stockbridge Select board

Specific person(s), if any, you allege committed the violation: Marie Rafferty, Christine Rasmussen, Nancy Seala, Katherine Fletcher, William Vogt, Gary Pitney, Wayne Stork

Date of alleged violation: Fall 2018 + February 2020

**Description of alleged violation:**

Describe the alleged violation that this complaint is about. If you believe the alleged violation was intentional, please say so and include the reasons supporting your belief.

Note: This text field has a maximum of 3000 characters.

*This law supports this claim.*  
(Sectional, Part 1, 9, i + ii) I am not a lawyer + do not know if I am referencing the correct law. I do not know if the alleged violation was intentional.

I believe that the Stockbridge select board committed one, possibly two open meeting law violations related to entering, then deliberating over and voting on, mediation over litigation with General Electric (GE) and the Environmental Protection Agency (EPA) about GE's mandated cleanup of the Housatonic river. The Stockbridge Select board along with Select boards in four other towns in Southern Berkshire County, signed a binding settlement agreement which has enormous impact on public health, the local economy, quality of life and safety of our water, and our livelihoods. The community was blindsided by its announcements and is in great distress as many of us were not in agreement. We are concerned about the pressures the select boards were put under by GE + the EPA's lawyers to have violated the trust of their constituents.

What action do you want the public body to take in response to your complaint?

Note: This text field has a maximum of 500 characters.

*We have not found in the open law that contradicts or better supports this claim, please advise.*  
I want the Select board to withdraw their consent to the settlement until the public can be properly and legally involved. With our will considered in decisions about the fate of our river, I want them to release the executive session minutes in which they deliberated and voted about this issue. It is also my hope that an investigation will occur into what pressures GE, EPA or their lawyers put on other parties to the mediation to achieve their assent.

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By signing below, I acknowledge that I have read and understood the provisions above and certify that the information I have provided is true and correct to the best of my knowledge.

Signed: \_\_\_\_\_

Date: 3-10-2020

For Use By Public Body  
Date Received by Public Body

For Use By AGO  
Date Received by AGO