

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by
Bernard Sherneski and
Stella Sherneski,

FINAL DECISION

Complainants

Docket #FIC83-58

against

September 21, 1983

North Branford
Zoning Board of
Appeals,

Respondent

The above captioned matter was heard as a contested case on July 1, 1983, at which time the complainants and the respondent appeared and presented testimony, exhibits and argument on the complaint.

After consideration of the entire record the following facts are found:

1. The respondent is a public agency within the meaning of §1-18a(a), G.S.

2. On March 21, 1983 the respondent held a meeting at which it voted against the granting of a request for a variance, application number 82-14, submitted to the respondent by the complainants.

3. By letter of complaint filed with the Commission on April 12, 1983 the complainants requested that the March 21, 1983 decision be declared null and void based upon the following allegations:

a) That the votes of each member of the respondent were not reduced to writing and made available for public inspection within forty-eight hours of the meeting and were not recorded in the minutes of the meeting;

b) That the respondent, in addition to voting, considered and discussed information "which apparently contained inconsistent statements that produced confusion among Board members;" and

c) That the notice of the March 21, 1983 meeting, which stated only that the respondent would "vote on cases previously heard," did not provide adequate notice that the complainant's request would be considered.

4. At hearing, upon motion of the respondent, the complaint against the town of North Branford was dismissed.

5. It is found that minutes of the respondent's March 21, 1983 meeting, filed with the town clerk on or about March 24, 1983, indicated that "[t]he board voted 3 to 2 in opposition to granting the [complainants'] variance," without indicating which members voted for and which against.

6. On or about April 19, 1983, the respondent amended the minutes of the March 21, 1983 meeting to reflect which members voted for and which against the complainants' application for a variance.

7. The respondent failed to prove that a complete record of the votes taken at the March 21, 1983 meeting was otherwise made available for public inspection prior to the amending of the minutes on or about April 19, 1983.

8. It is therefore found that the respondent failed to, in a timely manner, make available for public inspection a complete record of its votes on the complainants' application, in violation of §1-21, G.S.

9. It is found that at the March 21, 1983 meeting the respondent considered a written legal opinion from its counsel on the issue of the complainants' application.

10. The complainants have characterized the legal opinion as "confusing" and claim that because the stated purpose of the March 21, 1983 meeting was "to vote," the respondent should not have taken the document into consideration.

11. It is found that the stated purpose of the meeting gave adequate notice to the public that the members of the respondent might discuss among themselves the merits of the issues before them and might consider oral or written advice from its attorney, prior to the actual taking of votes.

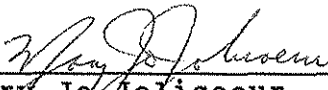
12. It is found, however, that the stated purpose of the March 21, 1983 meeting was not sufficiently specific to apprise the public of the issues on which votes were to be taken.

13. It is therefore found that the complainants were denied meaningful notice that a decision on their application for a variance would be rendered at the respondent's March 21, 1983 meeting.

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

1. All actions taken by the respondent at its March 21, 1983 meeting with respect to application number 82-14, submitted by the complainants, is hereby declared null and void.

Approved by order of the Freedom of Information Commission at its regular meeting of September 14, 1983.



Mary Jo Jolicoeur
Clerk of the Commission