

FREEDOM OF INFORMATION COMMISSION  
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Siobhan Peng,

Complainant

against

Docket #FIC 2018-0397

Chairman, Neptune Park Association,  
Board of Governors; and Neptune Park  
Association, Board of Governors,

Respondents

December 19, 2018

The above-captioned matter was heard as a contested case on October 2, 2018, at which time the complainant and the respondents appeared and presented testimony, exhibits and argument on the complaint.

After the hearing was adjourned, the complainant and the respondents each filed additional proposed exhibits. Absent objection to any of the proposed exhibits from any party, the following have been marked as full exhibits in this matter:

Complainant's Exhibit S (after-filed) – Email, dated October 3, 2018, from the complainant to the FOIC, with a copy of "FEMA notes," attached;

Complainant's Exhibit R (after-filed) – Email, dated October 3, 2018, from the complainant to the FOIC, with a copy of minutes of June 30, 2012 annual meeting, attached;

Respondents' Exhibit 5 (after-filed) – Email, dated October 3, 2018, from Attorney Krisch to the FOIC, with a copy of 1933 Special Act 310; 1957 Special Act 522; and excerpt from Index to Connecticut Special Acts, attached;

Respondents' Exhibit 6 (after-filed) – Email, dated October 3, 2018, from Attorney Krisch to the FOIC, with a copy of current bylaws, attached;

Respondents' Exhibit 7 (after-filed) – Email, dated October 5, 2018, from Attorney Krisch to the FOIC, with a copy of certificate of amendment; and correspondence to and from

the Recording Division of the Secretary of the State's Office, attached.

After consideration of the entire record, the following facts are found and conclusions of law are reached:

1. It is found that, on June 28, 2018, the complainant requested a copy of the minutes of certain meetings of the "Rental Subcommittee," and on June 29, 2018, requested a copy of the minutes and records of votes taken at the June 24, 2018 Annual Meeting of the respondent association, from the respondent chairman.

2. By email dated and filed with the Commission on July 20, 2018, the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by failing to comply with the notice provisions contained in the respondent association's charter; and by failing to provide copies of the requested minutes and records of votes.

3. On September 28, 2018, the respondents filed a motion to dismiss the complaint on the ground that the respondents are not public agencies, and that therefore, the Commission lacks jurisdiction over the complaint.

4. At the hearing in this matter, the hearing officer denied such motion, and requested that the parties present all evidence in support of their respective positions.

5. As defined in §1-200(1), G.S., "public agency" or "agency" means:

(A) Any executive, administrative or legislative office of the state or any political subdivision of the state and any state or town agency, any department, institution, bureau, board, commission, authority or official of the state or of any city, town, borough, municipal corporation, school district, regional district or other district or other political subdivision of the state, including any committee of, or created by, any such office, subdivision, agency, department, institution, bureau, board, commission, authority or official, and also includes any judicial office, official, or body or committee thereof but only with respect to its or their administrative functions, and for purposes of this subparagraph, "judicial office" includes, but is not limited to, the Division of Public Defender Services; (B) Any person to the extent such person is deemed to be the functional equivalent of a public agency pursuant to law; or (C) Any "implementing agency", as defined in section 32-222.

6. The Commission takes administrative notice that, on several occasions, it has determined that entities that were created by special act of the General Assembly and given the power to levy taxes and “discharge limited functions of self-government,” are public agencies within the meaning of §1-200(1)(A), G.S. See, e.g., Jeffrey Gandolfo and Merle Gandolfo v. Grove Beach Point Association, Docket #FIC 2015-580 (May 11, 2016) (association created by act of General Assembly, granting it taxing power, police power and other related powers, was a public agency within the meaning of §1-200(1)(A), G.S.); Jay Fain DBA Winton Park Holdings v. Winton Park Association, Docket #FIC 2008-139 (October 22, 2008), affirmed Winton Park Association, Inc. v. Freedom of Information Commission, judicial district of New Britain, Docket No. CV08-4019339-S (October 7, 2009) (association created as a “body politic” by special act of the General Assembly, granting it the right to raise taxes, regulate the use and right of easements, build and maintain all necessary main sewers and drains, appoint special police to act with the same powers and duties that constables have in towns, make reasonable health regulations, and approve the construction and appearance of structures, was a public agency within the meaning of §1-200(1)(A), G.S.); John Holthaus v. Clerk, Morningside Association, Docket #FIC 2006-461 (July 25, 2007) (association created by special act of the General Assembly, giving it the right to levy taxes, appoint police officers, foreclose on real estate, and acquire land by eminent domain, was a public agency within the meaning of §1-200(1)(A), G.S.); Mr. and Mrs. Peter Serafin v. Lord’s Point Association, Inc., Docket #FIC 87-115 (July 22, 1987) (association incorporated by special act of the General Assembly empowering it to levy taxes for improvement of specific land and protect interests of inhabitants, was a public agency within the meaning of §1-18a(a), now §1-200(1), G.S.)

7. It is found that the respondent association was created by special act of the General Assembly in 1933 as a “body politic and corporate.”<sup>1</sup> It is also found that the association’s charter was amended by special act of the General Assembly in 1957,<sup>2</sup> and amended by the respondent association in 2015.

8. It is found that the association’s charter, as amended, defines the geographic limits and territory of the association and gives the association authority to:

- (a) hold, purchase, sell and convey real and personal estate;
- (b) employ one or more persons to act as “special policemen and watchmen...to enter on any of the private property within said limits whenever it shall be necessary for the protection of the same against fire, theft, loss or injury;”
- (c) make rules and regulations for the care and protection of the open beach above the high water mark;
- (d) levy taxes;
- (e) appoint a tax collector who “shall have all the powers of collectors of town taxes;”

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<sup>1</sup> 1933 Special Act 310.

<sup>2</sup> 1957 Special Act 522.

(f) foreclose on property “in the same manner in which liens for taxes due the town of New London are foreclosed;”

(g) protect the health of the inhabitants by “examining into” all nuisances and sources of filth injurious to the public health and remove all such filth;

(h) within the limits of the association, enforce the zoning laws of the city of New London pertaining to health and nuisance;

(i) appoint a zoning officer to conduct inspections and examinations of any building, structure, place or premises and to “order in writing the limiting of any condition found to exist thereon in violation of any of such ordinances and laws.”

9. Based upon the foregoing, it is found that the respondent association is “discharging limited functions of self-government.”

10. It is concluded that the respondent association is a “district or other political subdivision of the state” and therefore is a public agency within the meaning of §1-200(1)(A), G.S. Based on this conclusion, it is further concluded that the respondent chairman is also a public agency.

11. The respondents argued that the respondent association is distinguishable from the association in Winton Park in that it was established as a “body politic and corporate,” whereas Winton Park was established as a “body politic.” However, the respondents offered no evidence or argument regarding the meaning of the term “corporate,” and therefore failed to demonstrate the significance of such distinction.

12. The Commission also finds it insignificant to the determination of the association’s status, that the respondent association, rather than the General Assembly, amended the association’s charter in 2015, in the absence of any evidence or argument regarding the significance of this distinction.

13. Because the respondents are public agencies under §1-200(1)(A), G.S., the Commission need not consider whether the respondent association is the “functional equivalent” of a public agency, within the meaning of §1-200(1)(B), G.S.

14. With regard to the allegations that the respondents violated the FOI Act, §1-200(5), G.S., provides:

‘[p]ublic records or files’ means any recorded data or information relating to the conduct of the public’s business prepared, owned, used, received or retained by a public agency, or to which a public agency is entitled to receive a copy by law or contract under 1-218, whether such data or information be handwritten, typed, tape-recorded, printed,

photostated, photographed or recorded by any other method.

15. Section 1-210(a), G.S., provides in relevant part, that:

[e]xcept as otherwise provided by any federal law or state statute, all records maintained or kept on file by any public agency, whether or not such records are required by any law or by any rule or regulation, shall be public records and every person shall have the right to (1) inspect such records promptly during regular office or business hours, (2) copy such records in accordance with subsection (g) of section 1-212, or (3) receive a copy of such records in accordance with section 2-212... Each such agency shall keep and maintain all public records in its custody at its regular office or place of business in an accessible place and, if there is no such office or place of business, the public records pertaining to such agency shall be kept in the office of the clerk of the political subdivision in which such public agency is located....

16. Section 1-212(a), G.S., provides, in relevant part: “[a]ny person applying in writing shall receive, promptly upon request, a plain, facsimile, electronic or certified copy of any public record.

17. Section 1-225(a), provides:

(a) The meetings of all public agencies, except executive sessions, as defined in subdivision (6) of section 1-200, shall be open to the public. The votes of each member of any such public agency upon any issue before such public agency shall be reduced to writing and made available for public inspection within forty-eight hours and shall also be recorded in the minutes of the session at which taken. Not later than seven days after the date of the session to which such minutes refer, such minutes shall be available for public inspection and posted on such public agency’s Internet web site, if available, except that no public agency of a political subdivision of the state shall be required to post such minutes on an Internet website. Each public agency shall make, keep and maintain a record of the proceedings of its meetings.

18. With regard to the June 28<sup>th</sup> request, described in paragraph 1, above, it is found that the subcommittee of the respondent association itself is a public agency under §1-200(1)(A), G.S. It is found that the meetings of the subcommittee were not open to the public, and that the

subcommittee did not create minutes of the meetings at issue. Although §1-225(a), G.S., required that the subcommittee meetings be open to the public and that minutes be taken, the subcommittee was not named as a respondent in this matter.

19. With regard to the June 29<sup>th</sup> request, described in paragraph 1, above, it is found that the minutes and records of votes taken during the June 24<sup>th</sup> Annual Meeting, are public records within the meaning of §§1-200(5) and 1-210(a), G.S., and that the respondents did not provide a copy of such records to the complainant.

20. It is therefore concluded that the respondents violated §§1-210(a) and 1-212(a), G.S.

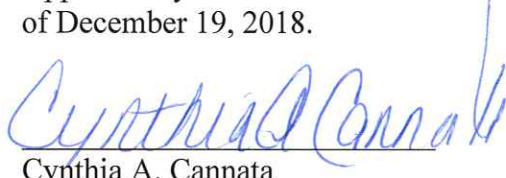
21. With regard to the allegation that the notice of the Annual Meeting did not comply with the notice provision contained in the association's charter, requiring individual notice "by letter postage prepaid" to each property owner/association member, it is concluded that the Commission lacks jurisdiction over such allegation.

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

1. Forthwith, the respondents shall provide a copy of the minutes of the June 24<sup>th</sup> Annual meeting and the record of votes taken at such meeting, to the complainant, free of charge.

2. The respondents, and any subcommittee thereof, are advised, henceforth, to strictly comply with all applicable requirements of the FOI Act. The respondents, and any subcommittee thereof, are further advised to maintain all records of the association and any subcommittee thereof, in a location that is accessible to the public during certain designated times of the day/week, or with the clerk of the town in which the association is located.

Approved by Order of the Freedom of Information Commission at its special meeting of December 19, 2018.



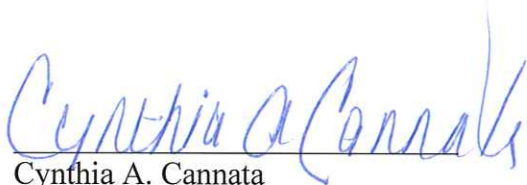
Cynthia A. Cannata  
Acting Clerk of the Commission

PURSUANT TO SECTION 4-180(c), G.S., THE FOLLOWING ARE THE NAMES OF EACH PARTY AND THE MOST RECENT MAILING ADDRESS, PROVIDED TO THE FREEDOM OF INFORMATION COMMISSION, OF THE PARTIES OR THEIR AUTHORIZED REPRESENTATIVE.

THE PARTIES TO THIS CONTESTED CASE ARE:

**SIOBHAN PENG**, 23 Lake Ridge Drive, Marlborough, CT 06447

**CHAIRMAN, NEPTUNE PARK ASSOCIATION, BOARD OF GOVERNORS; AND NEPTUNE PARK ASSOCIATION, BOARD OF GOVERNORS**, c/o Attorney Daniel J. Krisch, Halloran & Sage, LLP, 225 Asylum Street, Hartford, CT 06103



Cynthia A. Cannata  
Acting Clerk of the Commission