



Brown Legal PLLC
10 Liberty Square, 6th Floor
Boston, MA 02109
617.463.9133
www.brownlegalllc.com

May 25, 2022

Via Electronic Mail

Ms. Kim Leaird
planningboard@oakbluffsma.gov
Administrator to the Planning Board of Oak Bluffs
56 School Street
Oak Bluffs, MA 02557

Ms. Colleen Morris
cmorris@oakbluffsma.gov
Town Clerk of Oak Bluffs
56 School Street
Oak Bluffs, MA 02557

Mr. Ewell Hopkins
planningboardchair@oakbluffsma.gov
Chairperson of the Planning Board of Oak Bluffs
56 School Street
Oak Bluffs, MA 02557

**RE: Open Meeting Law Complaint Against the Planning Board
of Oak Bluffs regarding Shearer Cottage, Shearer Realty Trust,
4 & 5 Morgan Avenue and 7 Highland Avenue**

Dear Ms. Leaird, Mr. Hopkins and Ms. Morris:

Please find enclosed an Open Meeting Law Complaint related to the Planning Board of Oak Bluffs regarding Shearer Cottage, Shearer Realty Trust, 4 & 5 Morgan Avenue and 7 Highland Avenue.

Thank you for your attention to this matter.

Very truly yours,

/s/ Thomas D. Orr

Thomas D. Orr, Esq.
Enc.

cc: Geoghan E. Coogan, Esq.
client



OPEN MEETING LAW COMPLAINT FORM

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: Eric Last Name: Van Allen

Address: c/o Brown Legal PLLC, 10 Liberty Square, 6th Floor

City: Boston State: MA Zip Code: 02109

Phone Number: (617) 463-9133 Ext. _____

Email: brown@brownlegalllc.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): Planning Board of Oak Bluffs

Specific person(s), if any, you allege committed the violation: _____

Date of alleged violation: 3/31/22

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.

The Planning Board of Oak Bluffs ("Board") has violated the Open Meeting Law by virtue of its written decision ("Decision") regarding Shearer Cottage, Shearer Realty Trust, 4 & 5 Morgan Avenue and 7 Highland Avenue following the site plan review on March 31, 2022.

The Decision includes an additional condition that was not discussed during the Board's public meeting on March 31, 2022.

The Appeals Court deemed this to be a violation of the Open Meeting Law in the matter of Cameron v. DiVirgilio, 55 Mass. App. Ct. 24, 27-28 (2002). "In Yaro v. Board of Appeals of Newburyport, 10 Mass. App. Ct. 587, 590, 410 N.E.2d 725 (1980), we interpreted the open meeting law as requiring a zoning board to deliberate and arrive at its decision under public observation. After such a decision occurs, the filing of the decision is a necessary but ministerial act, simply memorializing the action taken at the meeting. See id. at 591, 410 N.E.2d 725 ('[The law does] not require a board to hold a public hearing for purposes of reducing to writing a decision reached at a meeting which was open to the public and where accurate records of the meeting are kept and the substance of the decision was made known to the public'). Cf. Kay-Vee Realty Co. v. Town Clerk of Ludlow, 355 Mass. 165, 168, 243 N.E.2d 813 (1969) (final action is complete under subdivision control law when board files a certificate of decision, which is a 'written assurance or official representation, that some act has or has not been done, or some event occurred, or some legal formality [has] been complied with.' Black's Law Dictionary [4th ed.]). Compare Mullin v. Planning Bd. of Brewster, 17 Mass.App.Ct. 139, 144, 456 N.E.2d 780 (1983). The decision and statement of reasons filed cannot vary in substance from the decision taken at the meeting. See Tenneco Oil Co. v. City Council of Springfield, 406 Mass. 658, 659-660, 549 N.E.2d 1135 (1990)."

The Board's insertion of an additional condition to the Decision did not become apparent until May 10, 2022, when the Board produced zoom links for its March 31st meeting in response to a public records request.

That same day, May 10, 2022, Atty. Geoghan Coogan immediately notified the Board of its violation. He stated, in part, the following:

"Condition #2 is incorrect. The Planning Board voted to condition the requirements of Paragraph #2, items a., b. and c., however the Board did not contain the requirement that the 'Three areas must be signed off and approved by the Oak Bluffs planning board prior to the issuance of any town permits' in the motion which was made, and voted on.

"That additional language was not a part of the motion, and therefore cannot be added as a condition. Please delete that, re-execute the decision and mail the original to my attention."

Just a few hours later, the Board responded to Atty. Geoghan Coogan that "[it] disagrees with [his] characterization and the decision stands."

To date, the Board has failed and refused to: (a.) remove the additional language from Condition #2; and (b.) re-execute the decision with said language omitted.

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.

A. Remove the following language from Condition #2: "Three areas must be signed off and approved by the Oak Bluffs planning board prior to the issuance of any town permits".

B. Re-execute the decision with the above-referenced language removed.

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.

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: YGM

as counsel for
Eric Van Allen

Date: 5/25/22

For Use By Public Body
Date Received by Public Body:

For Use By AGO
Date Received by AGO: