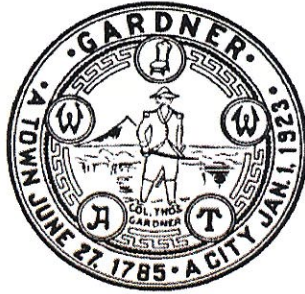


CITY OF GARDNER
Department of Public Works

Highway
Water
Sewer
Forestry
Parks/Playgrounds
Cemeteries



Dane E. Arnold, Director
50 Manca Drive
Gardner, MA 01440-2687
Telephone (978) 630-8195

darnold@gardner-ma.gov

December 18, 2023

MUNICIPAL GROUNDS/CEMETERY COMMISSION MEETING

Date: Thursday, January 4, 2024
Time: 7:45 a.m.
Location: DPW Office 50 Manca Drive

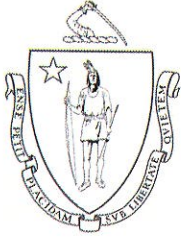
ANNOUNCEMENT - Any person may make a video or audio recording of an open session of a meeting, or may transmit the meeting through any medium, subject to reasonable requirements of the chair as to the number, placement and operation of equipment used so as not to interfere with the conduct of the meeting. Any person intending to make such recording shall notify the Chair forthwith. All Documents referenced or used during the meeting must be submitted in duplicate to the Clerk of the Committee, pursuant to the Open Meeting and Public Records Law. All documents shall become part of the official record of the meeting.

AGENDA

1. Approve Minutes of Previous Meeting
2. Financial Statement of Cemetery Department
3. A Ruling from the Attorney General relative to an Open Meeting Law Complaint Filed by Paul DeMeo.
4. Continued Study of Rates & Fees
5. Update from Bandstand Committee
6. Department Head Update
 - a. Conditions of Municipal Grounds
 - b. Conditions of Cemetery Department
7. Questions and Concerns of Committee:
 - a. Municipal Grounds
 - b. Cemetery Department
 - i. Guardrail update (Crystal Lake Cemetery)
8. Adjournment

NOTICE: The listing of Agenda items are those reasonably anticipated by the Chairman which may be discussed at the meeting. Not all items listed may in fact be discussed and other items not listed may also be brought up for discussion to the extent permitted by law.

John T. Awdycki, Chairman



THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE ATTORNEY GENERAL
ONE ASHBURTON PLACE
BOSTON, MASSACHUSETTS 02108

ANDREA JOY CAMPBELL
ATTORNEY GENERAL

(617) 727-2200
www.mass.gov/ago

November 21, 2023

OML 2023 – 200

VIA EMAIL

John T. Awdycki, Chair
Municipal Grounds / Cemetery Commission
50 Manca Drive
Gardner MA 01440-2687

jawdycki@msn.com

RE: Open Meeting Law Complaint

Dear Mr. Awdycki:

This office received a complaint from Paul DeMeo on August 7, 2023, alleging that the Gardner Cemetery Commission (the "Commission") violated the Open Meeting Law, G.L. c. 30A, §§ 18-25. The complaint originally was filed with the Commission on June 22.¹ The Commission did not respond to the complaint until our office inquired on August 8 as to the status of the Commission's response; the Commission's Chair responded on August 8 by sending minutes from a meeting the Commission held on July 6. The complaint alleges that topics listed on the notice for the Commission's June 22 meeting were insufficiently specific.

Following our review, we find that the Board did not violate the Open Meeting Law because the meeting of June 22 did not go forward. In reaching this determination, we reviewed the original complaint, with attached notice of meeting, the Commission's response, with minutes from meeting held on July 6, the request for further review filed with our office, and the meeting calendar available on the City of Gardner municipal website.

¹ Unless otherwise indicated, all dates in this letter refer to the year 2023.

FACTS

On June 15, the Commission posted notice of a meeting to take place on June 22. The notice for the June 22 meeting included the following list of topics for discussion:

1. Approve Minutes of Previous Meeting
2. Ordinances, General Laws and Special Acts
3. Correspondence
4. Financial Statement
5. Status of Facilities
6. Report from Department Head under Committee's Jurisdiction
7. New Business

A casual review of the City of Gardner's municipal website reveals that the Commission posted the identical list of topics on its notices for the preceding five meetings. Indeed, in the three years leading up to the June 22 meeting, only one meeting notice provided greater specificity as to the topics anticipated for discussion (the agenda for the meeting on February 10, 2022, included a discussion of welfare burial fees).

According to the City's website, the June 22 meeting was cancelled.

DISCUSSION

The Open Meeting Law was enacted "to eliminate much of the secrecy surrounding deliberations and decisions on which public policy is based." Ghiglione v. School Committee of Southbridge, 376 Mass. 70, 72 (1978). A public body must post notice of every meeting at least 48 hours in advance, not including Saturdays, Sundays, and legal holidays. G.L. c. 30A, § 20(b). Notices must include "a listing of topics that the chair reasonably anticipates will be discussed at the meeting." Id. The list of topics must have sufficient specificity to reasonably advise the public of the issues to be discussed at the meeting. 940 CMR 29.03(1)(b).

We generally consider a topic to be sufficiently specific when a reasonable member of the public could read the topic and understand the anticipated nature of the public body's discussion. See OML 2015- 35; OML 2019-134. We have previously stated that the Open Meeting Law requires that the notice describe topics with sufficient specificity so that the public can make an informed decision whether to attend the meeting in order to observe the discussion regarding a topic of interest. See OML 2023-86, 2023; OML 2019-95; OML 2018-22; OML 2015-74.

Boilerplate placeholders are vague and fail to provide the public with an understanding of the anticipated topics to be discussed. OML 2021- 121. Generic notice topics, such as "Conversations with Board Members" do not satisfy the requirement of specificity. OML 2022-179. We have provided ample guidance on this requirement. See, e.g., OML 2023-24 (notice topic "A favorable Ordinance Committee report: Chapter 7 Ordinance Revisions" insufficient to reasonably inform public that City Council Ordinance Committee would discuss salary increases for city councilors and other city officials); OML 2022-174 (notice topic "2022- 2023 School

Year Calendar” insufficient to reasonably inform public that school committee would discuss changing Columbus Day to Indigenous Peoples' Day on school calendar); OML 2019-89 (notice topics “Host Agreement,” “Land Development,” and “Non- Opposition letter” “did not sufficiently alert members of the public that the Selectboard would discuss a marijuana establishment - a topic that, no doubt, was the subject of immense public interest”); OML 2019-117 (notice topics “Discussion of the AIDS Support Group's plans in Falmouth” and “Seeing [sic] formal letter of support from the Board of Health” did not sufficiently alert members of public that board of health would discuss and vote on a syringe access program).

In this instance, we find that the Commission did not violate the Open Meeting Law as alleged in the complaint because the June 22 meeting was cancelled. If a meeting does not go forward, there can be no violation founded on insufficient notice. When a public body does not actually deliberate on a noticed topic, the public body cannot violate the Open Meeting Law with respect to that topic, even if it would have been insufficiently detailed had the public body proceeded with its deliberation. *See* OML 2022-128; OML 2020-149; OML 2020-53; OML 2015-63. Although we find that the Commission did not violate the Open Meeting Law, we note that the boilerplate notice posted for the Commission’s June 22 meeting, identical to those posted for nearly every meeting held during the prior three years, did not provide the level of specificity the Open Meeting Law requires.

Lastly, we note that the Commission’s response to the complaint did not strictly adhere to procedural requirements. Pursuant to the Attorney General’s regulations, a public body must, within 14 days of receiving an Open Meeting Law complaint, “meet to review the complaint's allegations; take remedial action, if appropriate; and send to the complainant a response and a description of any remedial action taken. The public body shall simultaneously notify the Attorney General that it has sent such materials to the complainant and shall provide the Attorney General with a copy of the complaint, the response, and a description of any remedial action taken.” 940 CMR 29.05(5). Although the Commission met and discussed the complaint on July 6, which was within 14 days of receipt of the complaint, it did not send the complainant a response nor simultaneously provide the Attorney General with a copy of the complaint, a response and a description of remedial action taken. We remind the Commission of its obligations under the Open Meeting Law.

CONCLUSION

For the reasons stated above, we find that the Board did not violate the Open Meeting Law. As noted above, we decide as we do because the June 22 meeting, which was the subject of this complaint, was cancelled. However, we caution the Commission that future notices must contain sufficient specificity to reasonably advise the public of the issues to be discussed at the meeting.²

² At its July 6 meeting, the Commission discussed Mr. DeMeo’s complaint and adopted a new format for its notices, which distinguishes matters of interest to the Commission from matters of interest to Municipal Grounds. However, of greater importance than this separation is the need to explicitly list “specific items that arise,” as the Commission now recognizes it must do. Only if it includes specific items will the Commission avoid the boilerplate agenda that runs afoul of Open Meeting Law.

We now consider the complaint addressed by this determination to be resolved. This determination does not address any other complaints that may be pending with our office or the Board. Please feel free to contact the Division at (617) 963 - 2540 if you have any questions.

Sincerely,



Matthew Lindberg
Assistant Attorney General
Division of Open Government

cc: Paul DeMeo (via e-mail: ryanrealty@comcast.net)
Gardner City Clerk (via e-mail: tsiriphan@gardner-ma.gov)

This determination was issued pursuant to G.L. c. 30A, § 23(c). A public body or any member of a body aggrieved by a final order of the Attorney General may obtain judicial review through an action filed in Superior Court pursuant to G.L. c. 30A, § 23(d). The complaint must be filed in Superior Court within twenty-one days of receipt of a final order.