9 *Official Opinions of the Compliance Board* 175 (2014)

- **2(A) PUBLIC BODY'S DUTY TO GIVE NOTICE NOT ALTERED BY REQUIREMENT THAT LAND USE APPLICANT NOTIFY NEIGHBORS OF THE MEETING**

- **6(A) COPY OF NOTICE – REQUIREMENT MET WHEN SCREENSHOT CAN BE RECOVERED**

- **6(B)(2)(C) MINUTES – PRACTICES IN VIOLATION FAILURE TO PREPARE AND ADOPT**

***Topic numbers and headings correspond to those in the Opinions Index (2014 edition) at http://www.oag.state.md.us/opengov/openmeetings/appf.pdf**

November 19, 2014

Re: Prince George's County Telecommunications Transmission Facility Coordinating Committee

Janis Z. Sartucci, Complainant

Janis Z. Sartucci ("Complainant") has alleged that the Prince George's County Telecommunications Transmission Facility Coordinating Committee (the "Committee"), a public body established by the Prince George's County Code, violated the Open Meetings Act by meeting in July 2014 without providing notice to the public, without enabling the public to attend, and without keeping minutes. The Complainant further alleges that, until September 2014, she was unable to learn anything about the Committee either from a listing for it on the Prince George's County government's webpage for boards and commissions or from calls to the telephone number posted there. That number, Complainant states, was answered during the summer by a consultant whose contract had expired, and callers to that number were told that no information could be provided until the County had renewed the contract. Complainant provided the link to the page she viewed.

The County explains that the Committee in fact has its own webpage on the County's website. The Committee's page was evidently accessible through a link for the County's permitting boards and commissions, and it appears that Complainant did not find it. In response to this complaint, the County has now provided a link to that page on the page that Complainant had viewed. The County further states that the Committee posts its

meetings on its webpage in the form of an agenda, that the meetings are listed on the County's "roll-up" events calendar during the week of the meeting, and that the Committee now also posts a standing notice of its regular meetings. The County explains that the Committee meets to address applications to install telecommunications towers, antennas, and poles. Before the Committee meets on an application, the applicant must send a meeting notice to adjoining property owners and also to municipalities and civic associations within one mile of the proposed site. Additionally, applicants must provide each affected school with postcards, for the students to take home, that provide notice of the meeting.

As to the July 2014 meeting, the County was able to recover a screenshot of the meeting notice it posted on its website, and it provided us also with a screenshot of the notice that the applicant posted on its website. The County estimates that 15 to 20 members of the public attended the meeting, which was held in a place accessible to the public. With regard to the keeping of minutes, the County states that the Committee treated its agenda as minutes. A Committee staff member has now taken training on the Act, and the Committee will make recordings of its meetings available to members of the public. We add that the notice of the Committee's next meeting is now prominently displayed on its webpage.

Four provisions of the Act are relevant to the facts before us: (1) a public body must provide "reasonable advance notice" of each meeting, § 3-302(a)[1]; (2) the meeting must be open to the public, § 3-301; (3) the public body must keep a copy of the notice for one year, § 3-302(d); and (4) the public body must keep minutes of the meeting. § 3-306. As to the first requirement, notice was provided, but we are unable to assess whether the Committee, as opposed to the applicant, provided it reasonably in advance, as the screenshot does not reflect the date on which the meeting was posted. The Act does not provide that notice given by a private entity of a meeting that involves the private entity may serve as the notice that the public body must give, especially if the public body will meet on items other than the private entity's application. The County's imposition of a notice requirement for applicants demonstrates the County's intent that notice be given to the people and associations most likely to be interested in a particular topic, but it does not establish that the Committee itself provided reasonable advance notice.

As to the second requirement, that the meeting be open to the public, nothing before us suggests that the Committee excluded members of the public from the meeting room. We therefore do not find any violation of the open-meeting requirement.

As to the third requirement, that a copy of the notice be retained, the County's information technology staff was able to recover a screenshot of the notice that appeared, so we find that a copy was kept. We suggest that

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[1] The Act is codified in the General Provisions Article of the Maryland Code, and all citations are to that article. The Act is posted at http://www.oag.state.md.us/Opengov/Openmeetings/10_1_14_OPEN_MEETINGS_ACT.pdf.

public bodies record the date on which they post website notices and keep a hard copy so that they can address concerns about the adequacy of their notices.

As to the fourth requirement, that minutes be kept, the Act requires that written minutes "reflect: (i) each item that the public body considered; (ii) the action that the public body took on each item; and (iii) each vote that was recorded. § 3-306(c). Alternatively, a public body may make "live and archived video or audio streaming" available to the public. § 3-306(b). An agenda prepared before a meeting does not serve as minutes of the actual events of a meeting. We therefore find that the Committee violated the Act by failing to prepare minutes of the meetings that preceded the review of its practices that was occasioned by this complaint. To substitute for written minutes, an audio recording must be streamed live and then archived.

In sum, we have found that the Committee violated the Act's requirement that minutes be kept. We were unable to assess whether the notice that the Committee gave was "reasonably in advance"; we have found that the meeting was open to the public; and we have advised public bodies to keep a note of when they post notices on a website and to retain hard copies. We commend the County on the improvements it has made to its website to ensure that members of the public can find the Committee's meeting information.

Open Meetings Compliance Board

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