

*Wellfleet Selectboard  
Virtual Meeting ~ Zoom  
Friday May 6, 2022; 7pm  
Meeting Agenda*

***I. Announcement, Open Session, and Public Comments***

***NOTE:*** *Public Comments must be brief. The board will not deliberate or vote on matters raised solely during announcements and public comments.*

***II. Response to Open Meeting Law Complaint filed on April 12, 2022. ~  
Judith Ahern***

***III. Press Release regarding Maurice's Campground Proposal***

***IV. Adjourn***

**Join Zoom Meeting**

<https://us02web.zoom.us/j/85689604806?pwd=blplVFFBZzViQ0xNWkZKMm9iMVdrdz09>

**Meeting ID:** 856 8960 4806

**Passcode:** 611877

**Dial by your location**

+1 929 205 6099 US (New York)



## 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: Judith Last Name: Ahern

Address: PO Box 394

City: South Wellfleet State: MA Zip Code: 02663

Phone Number: 917-488-1513 Ext. \_\_\_\_\_

Email: jude@judeahern.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): Wellfleet Selectboard

Specific person(s), if any, you allege committed the violation: Janet Reinhart, Michael DeVasto and Rebekah Eldridge

Date of alleged violation: 4/12/22

## 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.

Wellfleet Selectboard members Reinhart and DeVasto and Selectboard secretary Eldridge intentionally violated my civil liberty to participate in a public Selectboard meeting on April 12, 2022, wherein there was a discussion about upcoming elections. Reinhart and DeVasto did not like my Zoom background that includes a sign that reads DETHRONE DEVASTO and other artwork. I was on the beginning of the Selectboard agenda to address my Open Meeting Law complaint re: Selectboard member Wilson having sowed confusion about the upcoming election during their 3/8/22 meeting. That discussion was limited in scope and inconclusive. I still have some questions about the election process and wanted to understand what occurred and try to resolve the problem and Selectboard Chair Curley assured me that later there would be a discussion about the Special Election for the vacated Selectboard seat. Hearing that, I waited 1-1/2 hours for this discussion which didn't begin until 9:20pm. Before 8pm, I was no longer in the Zoom meeting and my video had been disabled by the host, Rebekah Eldridge. Soon thereafter I was able to rejoin the meeting, without video but with a static photo, but about 10 minutes later I was ejected again with an automated Zoom message declaring "Unable to join this meeting. You are unable to rejoin this meeting because you were previously removed by the host". Therefore I had no other option than to dial-in and was prevented from unmuting myself by pressing \*6 as instructed. This began sometime before 7:54 and lasted through the end of the meeting at about 10:15pm. I tried many times and took multiple screen shots as evidence. When the discussion about the Special Town Election began at 9:20pm, Boardmember Wolf asked, through the Chair, why I was not able to join the meeting since I was the one who brought it up earlier in the meeting. Selectboard Chair Curley said he saw me come back in so he did not know what the issue was (not knowing I was permanently kicked out the second time). At that point Selectboard secretary Eldridge interrupted and said: "John, that was my fault, I accidentally removed her when I was trying to re ah, put her picture out, that was my fault, that was not intentional." as if the issue had since been resolved, which it had not. Eldridge never allowed me rejoin the meeting nor did she unmute me while I was dialed-in. Eldridge did not mention at that time that it was Reinhart who had instructed her to remove me from the meeting because she did not like my Zoom background nor did she mention that she apparently initially resisted this order. Selectboard Chair Curley believed Eldridge and continued the discussion without me. The next day I filed a Citizen's Complaint form and the our interim Town Administrator Sumner investigated. Eldridge then claimed that Reinhart told her to do remove me, not that it was an Zoom unintentional mistake. Only after Reinhart heard that Eldridge was still getting an official reprimand (according to union rules) did she write a letter to the other members of the Selectboard claiming sole responsibility. Reinhart also wrote in that letter that she was resigning now and that the April 12 meeting was her last. DeVasto thinks the Open Meeting law complaint process is a waste of time.

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.

On Friday, April 15 at 2:30pm I made a public records request for any communications between Selectboard members or town employees and Eldridge from April 12-15. 1) I respectfully ask the Town Clerk to not wait the full ten business days to procure this information. It is relevant to this OML complaint which needs to be filed immediately so that it can make an agenda before the election on May 2, 2022. 2) I would also ask that you include Reinhart's April 14 letter to the rest of the Selectboard. 3) To include this OML complaint on the next Selectboard agenda on April 26. 4) That Chair Curley exercise his power as Chair to investigate himself and/or instruct Town Administrator Sumner to investigate how Selectboard members circumvented his authority and Town Charter with the help of a town employee. 5) That all those involved will be reprimanded publicly (or if protected by union rules and then stated as the reason) to remind everyone that public discourse and dissent is vital to ensure a democratic process and that this kind of behavior is no longer acceptable in the Town of Wellfleet.

## 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](mailto: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: \_\_\_\_\_

Date: \_\_\_\_\_

For Use By Public Body  
Date Received by Public Body:

For Use By AGO  
Date Received by AGO:

May ----, 2022

**Janelle M. Austin**  
jaustin@k-plaw.com

BY ELECTRONIC MAIL ONLY ([openmeeting@mass.gov](mailto:openmeeting@mass.gov))

Ms. Carrie Benedon  
Assistant Attorney General  
Director, Division of Open Government  
Office of Attorney General  
One Ashburton Place, 20<sup>th</sup> Fl.  
Boston, MA 02108

Re: Town of Wellfleet – Selectboard  
Open Meeting Law Complaint from Judith Ahern, dated April 18, 2022

Dear Ms. Benedon:

As you know, this office serves as Town Counsel to the Town of Wellfleet (the “Town”). The Town’s Selectboard (the “Board”) is in receipt of an Open Meeting Law Complaint (“Complaint”) from Ms. Judith Ahern, dated April 18, 2022. A copy of that Complaint is attached hereto as Exhibit 1.<sup>1</sup> Although the Complaint also challenges the participation by the Board’s assistant in that discussion, she is not a member of the Board and her participation does not implicate the Open Meeting Law.

Following receipt of the Complaint, the Board met on May [REDACTED], 2022, in accordance with an item included on properly posted meeting notice for such purposes, to discuss the Complaint and consider its response. At that meeting, the Board carefully reviewed the allegations contained in the Complaint and authorized this office to submit the following response on its behalf, in accordance with G.L. c.30A, §23 and 940 CMR 29.05(5).

### **DISCUSSION**

In this Complaint, Ms. Ahern alleges that the Board’s assistant and the Board intentionally violated her First Amendment rights to participate in a Board meeting when, at its April 12, 2022 meeting, the Secretary attempted to turn off Ms. Ahern’s video screen during the meeting, and in doing so, accidentally removed her from being able to access the meeting via Zoom with video, rather through real-time telephone access. Because she was reported to Zoom, the Zoom platform automatically did not let her re-enter the meeting, so she had to use the call-in feature to access the proceedings in real time. As a remedy, she requests, in part, that the Division order the Town Clerk to provide her with public records before the ten business days and publically reprimand all who

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<sup>1</sup> Ms. Ahern has another other pending Open Meeting Law complaints challenging the Selectboard’s meeting on March 8, 2022, which has been addressed in a separate response.

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Assistant Attorney General  
May 9, 2022  
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were involved. The Board submits that Ms. Ahern's allegations regarding the First Amendment, other civil liberties, or the Public Records Law are outside the scope of the Division's review. See, e.g., OML Declination 1-21-2014 (The Division of Open Government reviews complaints to determine compliance with the Open Meeting Law only, and does not review compliance with other laws); OML 2018-89 (Division does not review alleged violations of public records law, G.L. c. 66, § 10).

That said, the Board acknowledges that Ms. Ahern participated in the meeting before it had an unintentional technology issue that resulted in removing Ms. Ahern from the meeting at ----- time when her video was turned off during the meeting's proceedings, but expressly denies that it intentionally sought to remove her from the meeting, and states that she was allowed to access the meeting in real time via the Zoom telephone call in line, as she acknowledges in the Complaint. See, e.g., LaPointe v. License Board of Worcester, 389 Mass. 454, 455 (1983); OML 2019-73 ("absent sufficient evidence to the contrary, we credit a public body's account of the facts"). Though she was able to access the meeting by calling in, the Board acknowledges its error and is reviewing its technology practices at this time.<sup>2</sup> The Board will also provide Ms. Ahern with a copy of the minutes for any portions of the meeting she missed, which can also be reviewed online.<sup>3</sup> Accordingly, that the Board submits that Ms. Ahern was able to access the meeting by telephone and thus had "adequate, alternative means" to access the April 12<sup>th</sup> meeting and was not denied the ability to speak during any public comment portion of the meeting.

Finally, at its meeting on May [REDACTED], 2022, the Board ratified all substantive discussions that Ms. Ahern may have missed during the April 12, 2022 meeting during an interruption in her video and telephone access to the meeting. "Violations of the Open Meeting Law may be cured by independent, deliberative action that is not merely a ceremonial acceptance and perfunctory ratification of action taken in violation of the law." OML 2021-159, citing Pearson v. Board of Selectmen of Longmeadow, 49 Mass. App. Ct. 119, 125 (2000). See also OML 2020-7; OML 2016-49. In determining whether a violation was sufficiently cured, the Division "consider[s] whether the notice for the [subsequent] meeting was sufficiently specific to reasonably advise the public of the topics to be discussed." OML 2021-159. The Division also considers whether the "discussion and action ... cured the violation" from a prior meeting. OML 2021-159. Where the Board discusses at

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<sup>2</sup> As the Division of Open Government has determined: "[t]he Open Meeting Law does not require that public bodies allow public comment or public participation during meetings -- to the contrary, the Open Meeting Law specifies that nobody shall address the public body without permission of the chair. However, the Attorney General encourages public bodies to allow public comment and/or public participation when feasible. Because the Open Meeting Law does not require that public bodies allow for public comment or public participation during meetings at all, the manner that public bodies may choose to accept comment or questions is outside the scope of the Open Meeting Law." See Division of Open Government Updated Guidance on holding meetings pursuant to the Act Extending Certain COVID-19 Measures dated February 18, 2022.

<sup>3</sup> The April 12 meeting can also be reviewed by Ms. Ahern as it is documented online, available at <https://www.youtube.com/watch?v=KcRo4mhHeA4>.



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length the vote that occurred and rescinds the vote taken previously, it is sufficient to ratify the discussions. Id. Here, the Board expressly included in its agenda item that it would ratify its discussions from the April 12 meeting, and conducted a substantive discussion of same. As such, it considers the matter remediated.

### CONCLUSION

The Board understands its obligations under the Open Meeting Law and is committed to full transparency in its practices for members of the public. The Board has, in consultation with Town staff, reviewed this matter in detail in good faith in an effort to resolve this Complaint.

If you have any questions, please do not hesitate to contact me. Thank you for your attention to this matter.

Very truly yours,

Janelle M. Austin

JMA/  
Enc.

cc: Selectboard  
Interim Town Administrator  
Ms. Judith Ahern (by electronic mail only)

812458/WELL/0178



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Assistant Attorney General  
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Hon. Ryan Derek Curley and  
Members of the Selectboard  
Wellfleet Town Hall  
300 Main Street  
Wellfleet, MA 02667

Mr. Charles Sumner  
Interim Town Administrator  
Wellfleet Town Hall  
300 Main Street  
Wellfleet, MA 02667



**Wellfleet Selectboard**  
**Town Hall – 300 Main Street**  
**Wellfleet, MA 02667**

FOR IMMEDIATE RELEASE

Contact: Ryan Curley, Chair of Selectboard

Phone: 508-349-0300

Email: [Ryan.Curley@wellfleet-ma.gov](mailto:Ryan.Curley@wellfleet-ma.gov)

Wellfleet, Massachusetts, May 6, 2022

**WELFLEET WORKGROUP HITS THE (CAMP) GROUND RUNNING**

**W**ellfleet Selectboard has created a working group to examine the proposed purchase of Maurice's Campground with the focus on using the property to create affordable and community housing. While the Selectboard has signed a purchase and sale agreement for this 21.25 acre property, questions remain that will need to be answered before voters go to Special Town Meeting on September 10. A working group of stakeholders, committee members and members of town departments has been formed to discuss questions around financing, infrastructure, and keeping the public informed. Meetings are open to the public, filmed and posted on the Town website.

Maurice's Working Group has been organized by Ryan Curley, chair of the Wellfleet Select Board with assistance from Kathleen Nagle, a local realtor with Kinlin Grover Realty. Kathleen is a member of the Wellfleet Municipal Affordable Housing Trust and is working pro bono at no cost to the town or profit to herself. "We couldn't have done this without Kathleen's knowledge of real estate and the many, many hours she has devoted to this cause over the last year. The Town owes her a big Thank you!" states Gary Sorkin, Chair of the Local Housing Partnership and member of the Housing Trust.

Part of the agreement with the sellers, the Gauthier brothers, includes running parts of the campground for 6 years to allow long term seasonal residents of the campground, both vacationers and summer workers, to devise other plans. This will also allow the



town to bring in some income during the long time required to study all possibilities and and move forward on those that voters approve.

Subgroups of the working group include:

- A group experienced in looking at buildings and infrastructure to determine what will be required to keep it all operational for the required six years and what may be of use after that.
- A group specifically looking at septic issues that currently exist and what the possibilities are in the short and especially in the long term.
- A finance group of subject matter experts looking at how the finances of the purchase might be structured and managed over the long term.
- An operations group investigating the nuts and bolts of operating the campground and potentially the store. This includes considering the possibility of leasing operations to a professional firm for management and how this may factor into finances.
- A communications group with the goal of keeping the voters and other stakeholders informed and up to date.

The Working Group hopes to anticipate and respond to every question and contingencies that may arise between now and Special Town Meeting. “We are really hoping to move this forward in an open and transparent way with maximum community support.” States Sharon Rule-Agger of the Local Housing Partnership and the Housing Trust. A Wellfleet Forum presentation is planned for later in the summer. Questions and comments can be emailed to [info@wellfleethousing.org](mailto:info@wellfleethousing.org) where they will be responded to and added to the extensive FAQs already posted there. Information and questions will also be posted on Wellfleet Community Space Facebook page

After Special Town Meeting in September, if the Voters approve the purchase, a new working Group will be formed to study how the property can best be used to meet the needs of the community.