

William P. Leahy v. Newton Community Preservation Committee, Civil Action No. 1981cv3254.

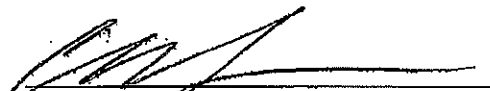
The plaintiffs, three registered voters of Newton, brought this action alleging that the Newton Community Preservation Committee ("NCPC") violated the Open Meeting Law, G.L. c. 30A, §§ 18-25, in the process of considering the City of Newton's application to the NCPC to fund the City's taking by eminent domain. The proposed taking concerns Webster Woods, owned by Boston College, with which Plaintiffs are affiliated. Plaintiffs seek a preliminary injunction enjoining the meeting of the NCPC scheduled for November 12, 2019 at 7:00 p.m. at which NCPC plans to vote on the City's request for funding. Because Plaintiffs allege NCPC improperly went into executive session to discuss the City's application, Plaintiffs assert that the NCPC may not vote on the application until the executive session materials are disclosed and the public has an opportunity to debate fully the question of funding the City's application.

Plaintiffs' argument relies on two contentions that are not supported by the record, at least at this early stage of litigation. First, Plaintiffs rely on a distinction between the City (*i.e.*, the Mayor and City Council) as the entity with eminent domain authority and the NCPC as the proposed funding source for a potential taking. Plaintiffs assert that the NCPC's singular role is to approve, or not, the City's application for funding and therefore NCPC is not entitled to any Open Meeting exemption for discussion of "strategy with respect to . . . litigation" or to consider the "value of real property" where the NCPC chair determines that open discussion will have a "detrimental effect" on the negotiating or litigation position of the body. G.L. c. 30A, § 21(a)(3) & (6). I disagree. It appears that NCPC's decision-making plays a significant role in Newton's overall initiative to take Webster Woods by eminent domain, an action that appears certain to result in litigation. I am persuaded by NCPC's argument that, among its issues for consideration are whether to fund the application, what collateral costs may be incurred, and how much those costs may increase with litigation. It is likely that NCPC appropriately employed the Open Meeting Law exemptions set forth at Section 21(a)(3) & (6).

Second, an important premise of Plaintiffs' argument is that there has been no public discussion at the NCPC of the policy decisions inherent in the NCPC's consideration of the City's application for funding the taking of Webster Woods. But the record of NCPC proceedings shows public discussion at the NCPC on at least October 10, 2019 and a public hearing on November 6, 2019. That certain aspects of the NCPC's discussions were reserved for executive session does not mean that public discussion of the policy issues did not occur.

At this juncture, Plaintiffs have not established a likelihood of success on the merits of its claim that the NCPC violated the Open Meeting Law by improperly relying on the exemptions set forth at Section 21(a)(3) and (6). Accordingly, Plaintiff's motion for preliminary injunction is denied.

November 12, 2019



Christopher K. Barry-Smith
Associate Justice