

Grand Isle Supervisory Union
CIUUSD Carousel Meeting
School Board Regular Meeting
Tuesday, January 8, 2019 at 6:30 p.m.
Location: North Hero Education & Community Center
Agenda

Call to Order

- | | |
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| 1. Call to Order (Gary Marckres) | 6:30 p.m. |
| 2. Adjust the Agenda (Gary Marckres) | 6:31 p.m. |
| 3. Citizens and/or Staff to be Heard | 6:35 p.m. |
| 4. Consent Agenda (Action) (Gary Marckres) | 6:40 p.m. |
| a. Approve the minutes from 12/11 /2018 | |
| 5. Report's | 6:45 p.m. |
| a. Superintendent's | |

Board Business.

- | | |
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| 5. DMG Overview (M. Clark) (Discussion) | 6:50 p.m. |
| 6. Second Draft of Budget and warning (R. Gess) (Action) | 6:55 p.m. |
| 7. Space Update (M. Clark) (Discussion) | 7:35 p.m. |
| 8. Transition Grant proposal costs(M. Clark)(Discussion) | 7:45 p.m. |
| 10. Intradistrict Choice Policy (M. Clark) (Discussion) | 8:05 p.m. |
| 11. Treasurer Resignation and Replacement process (M. Clark) (Discussion) | 8:25 p.m. |
| 12. Announced Tuition Rate (R. Gess) (Action) | 8:35 p.m. |
| 13. Principals' contracts (M. Clark) (Executive Session) | 8:40 p.m. |
| 13. Other | |

Closure

- | | |
|---|-----------|
| 14. Setting the next agenda (Gary Marckres)(Discussion) | 8:55 p.m. |
| 15. Adjourn | 9:00 p.m. |

Note: Executive Session: If discussion warrants, and the Board so votes, some items may be discussed in Executive Session pursuant to VSA 1 §313(a)

Discussion Items - Issues the Board needs to discuss and deliberate, but upon which no action is taken at this meeting.

Action Items - Issues that require the Board to make a decision by vote, may have been discussed over several meetings prior to this point.

Consent Items - Routine matters that need no discussion by the Board, but require Board approval. They are grouped together as a single agenda item. Background materials are provided in the Board packet to be reviewed ahead of the meeting. If there are no concerns, they are approved with a single vote. Any member can request the Board remove an item to be discussed and voted on separately. This frees up time at meetings.

Information Items [Incidental Information] - Matters the Board needs to know about, but for which no Board action is needed. The information flow is one way, from presenter to the Board. Questions for clarification are entertained as time allows.

Grand Isle Supervisory Union
CIUUSD Carousel Meeting
School Board Regular Meeting

Minutes

Board Present: Jane Zera, Don Bartlett, Mason Maltais, Gary Markcres (by phone, arrived at 6:57 pm)

Administration Present: Michael Clark, Rob Gess, Joe Resteghini, Lauren Thomas

Public Present: Joyce Tuck, Michael Inners, Bridget Brisson, Tim Maxham, Angela Ross

Call to Order

1. Call to Order- Mason Maltais called the meeting to order at 6:38 pm
2. Adjust the Agenda - Michael Clark recommended adding an executive session to discuss administrator contracts after item 10 on agenda.
3. Citizens and/or Staff to be Heard - none
4. Consent Agenda
 - a. Approve the minutes from 11/13/2018 - Jane Zera motioned, Mason seconded, no further discussion, Don Bartlett- yes, Mason Maltais- yes, Jand Zera- yes Gary Marckres- yes. Motion passes, 4-0.

Board Business.

5. Second Draft of Budget - Michael Clark explained that we have been through tuition numbers, short of having a new residency verification process, numbers are accurate. Currently invoiced for 135 students, next FY, with the addition of GI 7-8 grade being tuitioned, number jumps to 174. Tuitioned numbers were going to increase for each individual district prior to the merger. Rob Gess presented the budget explaining that it is still a fully-loaded budget and takes into account the current staffing levels within each building. Gained insight from principals recommending activities for next year. With the new tuition numbers, there is a 4.85% increase in the budget. This is the same trending as last year. 73-74% of total budget is wages, benefits, and tuition. GISU will be negotiating a new transportation contract that has been taken into account. General assessment has increased to take into consideration budget deficits. Michael Clark shared that next Tuesday is an all day event with the DMG group, looking at budgeting to come up with ideas to revive budget. Presented budget is looking at only expenditure side, and yield has been projected and is not set until May-June by legislature. Need to look at equalized pupils to help define tax rates. Rob Gess should be able to get updates at his VASBO meeting on when the equalized pupil count will be released from the state. Next meeting should have a more solid CIUUSD budget. Mason Maltais questioned if needs of individual schools is accounted for as well? Michael Clark shared that the work has carried on and that it requires the administration from individual buildings' input; and he is looking forward to see how the DMG meeting can help to further the work required. Mason Maltais asked that board members review budget and direct questions to Michael, Rob, and himself.

6. Space Update - Michael Clark shared that he met with the firm Exterus- specializing in modular office space. This would leave walls in tact and work to create a space with non-permanent walls. In initial

discussion with them, it seems the cost could be substantially lower. Michael Clark will continue to look at options and should be able to share more next time.

7. Recommendations for Transition Grant utilization - Michael Clark shared his drafted proposal.

Reviewed purpose of transition grant money: it is designed to establish a solid foundation and encourage equity throughout. Michael shared ideas to:

- Set up new chart of accounts- could benefit to contract this chart of accounts work to ensure compliance.
- Working more with CIUUSD administrators and board members to attend DMG meetings. Due to high turnover, it would be worth investing more time in working individually with the DMG group.
- Working with a communications/marketing firm to rebrand new district.
- May be additional policy work with Vermont School Board Association that is needed.
- Unify the staff handbook/ HR handbook. This is used as an important tool and the HR audit in FY18 identified deficiencies.
- A unified handbook that creates expectations to students and families.
- Explore resource equalization- amount of materials available in each building.
- Infrastructure needs within each building as well.
- Data research in study committee- the way it uses, views, and shares data with tuitioning students.
- Look at a choice handbook- drafting something to present to students and families to help them understand their options for tuition.
- Based on findings of FY17 audit, look at the cost of contracting payroll to free up valuable time of staff members.
- Negotiations committee meeting, depending on the involvement, it may require outside support and legal advice. Can only negotiate a one year contract at this time under state statute.

Gary Marckres asked if there is a contractor available for the crosswalk transition for the new chart of accounts. Michael Clark feels he could find someone. Gary feels that the handbooks and policy work would be a good path to follow. Contracting payroll may not be the best use of funds. Want to see analysis of costs and other ideas for infrastructure. Gary thinks the needs of the infrastructure study combines with the needs of future education should be looked into- mechanical and configuration for learning. Mason Maltais would be interested to see more direction in the data item on list. Communication between facilities to needs to be top notch to make sure they are functioning cohesively. Gary would like to see past cost of negotiations. Mason would like to see cost of handbooks. Gary asks that by meeting on January 8 that there is dollar values presented in relation to transition grant and CIUUSD budget.

8. Policy Review based on VSBA information - Michael Clark shared that he has been in touch with Sue C. She has started policy review and should complete next week and she should be able to come to next meeting.

9. Administrator collaborative approach to resourcing - Gary Marckres is looking for progress on supporting new student counts. Joe Resteghini shared that they have been setting a plan and tasks to create one community out of three. Conversations about maintaining quality employees and do it in a way that is financially efficient. Goal is to retain best quality employees and retain employees based on professional learning opportunities. Gary is looking for recommendations for how CIUUSD will be structured. Michael Clark shared that it is coming and that budget is soft and they have had conversations and a finalized budget will have finalized staffing levels. Michael is looking forward to DMG meeting to help them determine budgets to make decisions.

10. Mason Maltais motions to enter executive session, Jane second, all in favor, enter executive session at 7:37 pm.

Board exited executive session at 8:08 pm. No action to be taken.

Closure

11. Setting the next agenda: Draft Budget (including staffing levels), Space update, transition grant with numbers, DMG overview, VSBA policy review

12. Adjourn- Mason Motion to adjourn at 8:08 pm. All in favor.

Superintendent's Report

January 2019

Announced Tuition Rates

At each of the board meetings this month boards will need to set their announced tuition rates for the 2019-2020. Rob will calculate what the allowable tuition each district is allowed to charge based on Agency of Education formula. Section 836 of Title 16 is a mechanism for districts to true up their tuition charges in December of the following year in the event they over or under billed by three percent.

Error in FY 17 Title Grant Payments

The AOE has notified GISU that in July of 2017 the AOE made a duplicate payment of Title 1 and Title 2 monies to the GISU. The result is an overpayment to the GISU in the amount of approximately \$180,000 which the GISU will need to reimburse. I have contacted Emily Byrne (Chief Financial Officer for the AOE) and Cassandra Ryan (Fiscal and Regulatory Compliance Coordinator for the AOE) to discuss how this could have happened and to develop a plan to move forward. This meeting is scheduled to take place on January 4, 2019. I will update the boards when I have more information.

Negotiations

Members of the GISU Executive committee met on Monday December 10, 2018 to begin preparing to meet with the GISU Teacher's Association. We have our first negotiations meeting with the teachers on Tuesday, January 15th at 6:30 p.m. at the Grand Isle School.

Director of Student Services

A hiring advisory committee and I interviewed two candidates for the 2019-2020 Director of Student Support Services. The committee supported the decision to move one candidate forward to the GISU Board for approval. I will update you once the GISU board or executive committee has acted on the Superintendent's recommendation.

Update regarding lawsuit

Board Members

Judge Mello has ruled in favor of the GISU motion to dismiss the lawsuit. I have attached the ruling which we received today. Below is the specific language from the judgment:

"The court having ruled that summary judgment be entered in favor of the Defendants in this matter,

It is hereby ORDERED and ADJUDGED that the Plaintiff take nothing, that the action is dismissed on the merits, and that the final judgment be, and hereby is entered in favor of the Defendants."

This ruling brings the case to a close unless the decision is appealed to the VT Supreme Court which I believe is unlikely.

I have attached the full judgment with this report.

Residency Verification Process

Residency Verification forms are being sent from the GISU office on January 4, 2019. This process has been more time consuming than expected however we are still on track to receive forms back by the end of January. I will update you on our progress during February's meetings.

Thank you for the work you do to support education throughout the Islands.

STATE OF VERMONT

SUPERIOR COURT

Grand Isle Unit

CIVIL DIVISION

Docket No. 3-1-18 Gicv

LOUISE and MICHAEL KOSS, f/b/o
TAXPAYERS OF GRAND ISLE COUNTY,
Plaintiffs

v.

ANDY JULOW, DONALD VAN NOSTRAND, and
ALL OTHER GRAND ISLE SUPERVISORY UNION
BOARD MEMBERS,
Defendants

Vermont Superior Court

DEC - 4 2018 Filed

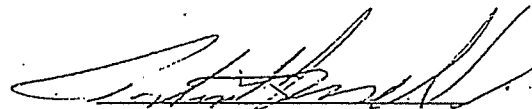
Grand Isle Unit

JUDGMENT

The Court having ordered that summary judgment be entered in favor of the Defendants in this matter,

It is hereby ORDERED and ADJUDGED that the Plaintiff take nothing, that the action is dismissed on the merits, and that final judgment be, and hereby is entered in favor of the Defendants.

SO ORDERED this 5th day of December, 2018



Robert A. Mello, Superior Judge

STATE OF VERMONT

SUPERIOR COURT
Grand Isle Unit

CIVIL DIVISION
Docket No. 3-1-18 Gicv

LOUISE KOSS and MICHAEL KOSS f/b/o
Taxpayers of Grand Isle County,
Plaintiffs,

v.

ANDY JULOW, DONALD VAN
NOSTRAND, and ALL OTHER GRAND
ISLE SUPERVISORY UNION BOARD
MEMBERS,
Defendants.

Vermont Superior Court

DEC - 4 2018 Filed

Grand Isle Unit

RULING ON MOTION FOR SUMMARY JUDGMENT

The Plaintiffs are residents of Isle La Motte, Vermont. The individually-named defendants are Andy Julow, at relevant times a board member and chair of both the Grand Isle Supervisory Union (GISU) and the newly-formed Champlain Islands Unified Union School District (CIUUSD), and Donald Van Nostrand, the GISU Superintendent. The Plaintiffs allege that, in 2017, Julow, Van Nostrand and other unnamed GISU Board Members violated Vermont's Open Meeting Law, 1 V.S.A. §§ 310-314¹. See Complaint (dated Jan. 22, 2018) at 1. They primarily seek \$1.875 million dollars in damages. Id. at 6. The Defendants have filed a Motion to Dismiss pursuant to V.R.C.P. 12(b)(6) (filed January 31, 2018), which the Court is treating as a Motion for Summary Judgment pursuant to V.R.C.P.12(b). For the reasons set forth below, summary judgment in favor of the Defendants is *granted*.

I. Background

In relevant part, V.R.C.P. 12(b) instructs that, when a party asserts a defense under Rule 12(b)(6) and "matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment

¹ The Complaint also sets forth a claim that Defendants violated 16 V.S.A. §§ 261 et seq. (governing supervisory unions). The Plaintiffs alleged that Andy Julow did not have a right to be a voting member or chair of the GISU under Title 16. See Plaintiffs' Opposition to Motion to Dismiss (filed March 12, 2018) at 1. At the November 16, 2018 hearing, the Plaintiffs withdrew that claim, thereby leaving only its Open Meeting Law claim for the Court's consideration.

and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such motion by Rule 56." On November 16, 2018, the Court heard oral argument on Defendants' Motion to Dismiss pursuant to V.R.C.P. 12(b)(6). That motion included as exhibits copies of GISU and CIUUSD meeting minutes.

In light of the parties' argument and exhibits appended to the Motion to Dismiss, the Court converted the Motion to Dismiss to a Motion for Summary Judgment and provided the parties notice and opportunity to submit additional briefing and documents for the Court's consideration. On November 25, 2018, the Defendants submitted a Post-Hearing Supplemental Memorandum and appended to it certified copies of GISU and CIUUSD board minutes (hereinafter "Defendants' Post-Hearing Memo"). As of the date of this ruling, the Plaintiffs have not submitted any additional materials for the Court's review.

"The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." V.R.C.P. 56(a). The court may enter summary judgment when, "after adequate time for discovery, a party fails to make a showing sufficient to establish the existence of an element essential to her case and upon which she has the burden of proof." Gallipo v. City of Rutland, 2005 VT 83, ¶ 13, 178 Vt. 244 (citation omitted).

When determining whether there is a disputed issue of material fact, a court must afford the party opposing summary judgment the benefit of all reasonable doubts and inferences. Carr v. Peerless Insurance Co., 168 Vt. 465, 476 (1998). However, a non-moving party cannot rely on unsupported generalities or speculation to defeat a properly-supported motion for summary judgment. See V.R.C.P. 56 (c), (e). "[C]onclusory allegations without facts to support them are insufficient to survive summary judgment." Robertson v. Mylan Laboratories, Inc., 2004 VT 15, ¶ 48, 176 Vt. 356; accord Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249 (1986) ("If the evidence is merely colorable, . . . or is not significantly probative, . . ., summary judgment may be granted.") (citations omitted). Moreover, when considering a motion for summary judgment, a court must not "accept[] opposing counsel's oral representations in open court as a proper response to the summary judgment motion." Gendreau v. Gorczyk, 161 Vt. 595, 596 (1993) (mem.). An opposing party's allegations must be supported by affidavits or other documentary materials which show specific facts sufficient to justify submitting that party's claims to a factfinder. See Robertson, 2004 VT 15, ¶ 15; Samplid Enterprises, Inc. v. First Vermont Bank, 165 Vt. 22, 25 (1996).

Upon review of the record and the parties' submissions, the Court finds the following material facts undisputed.

On November 6, 2016, the voters of Grand Isle, North Hero, and Isle La Motte voted to merge and form the CIUUSD. On July 1, 2019, the CIUUSD will become operational and the school districts of the aforementioned towns will cease to exist.

The GISU presently consists of board members who represent the school districts of Grand Isle, North Hero, Isle La Motte, South Hero, and Alburgh, as well as the newly formed CIUUSD. The GISU board and its members are subject to Vermont's Open Meeting Law, set forth in 1 V.S.A. §§ 310-314.

On September 6, 2017, the CIUUSD met at Grand Isle School and discussed several items, including whether the GISU Central Office should be moved to Grand Isle School. See CIUUSD September 6, 2017 Meeting Minutes (appended to Defendants' Post-Hearing Memo as Exhibit 6).

On September 13, 2017, the GISU Board conducted a meeting which the November 16, 2018 hearing on the Defendants' Motion to Dismiss revealed as providing a primary basis for Plaintiffs' complaint. The September 13, 2017 meeting minutes, in relevant part, reflect the following alleged procedural irregularity:

Meeting called to order by Andy Julow at 6:37 p.m. Since there was not a quorum at the start time of meeting, only informational items will be discussed at the beginning of the meeting. . . .

Consent Agenda: No quorum present at this time. Item tabled. . . .

GISU September 13, 2017 Meeting Minutes (appended to Defendants' Post-Hearing Memo as Exhibit 7). These minutes further reflect that, after the note of "no quorum present," between 6:40 and 7:36 p.m., six additional board members arrived, thereby providing a quorum for business and votes conducted after the 6:37 p.m. call of the meeting. See, e.g., *id.* at 2 (reflecting vote later in the meeting seconded by Jane Zera, who arrived at 6:41 p.m.). The "Business of the Board" eventually addressed a number of budgetary and administrative items, including an update on the CIUUSD merger process and a vote on who should be a voting delegate for the "VSBA." *Id.*

On September 25, 2017, the CIUUSD met at Grand Isle School and addressed efforts to comply with and receive full tax incentives pursuant to Act 46 and a continued discussion related to moving the GISU Central Office. CIUUSD September 25, 2017 Meeting Minutes (appended to Defendants' Post-Hearing Memo as Exhibit 8). On October 23, 2017, the CIUUSD met at Grand Isle School. The Board discussed potential configurations for the proposed new offices at Grand Isle

School. The meeting notes also reflect that “[i]t is up to the GISU Supervisory Union Board to approve the move to Grand Isle School.” CIUUSD October 23, 2017 Meeting Minutes (appended to Defendants’ Post-Hearing Memo as Exhibit 9).

On November 27, 2017, the CIUUSD again met and discussed matters related to the office relocation:

Finalized SU Relocation Proposal: Handout provided by Andy outlining current expenses for the GISU compared to what expenses would be if the office was located at Grand Isle School. Andy also provided a copy of a lease to the board. Discussion took place regarding the lease. A few corrections were brought up such as custodial services, insurance rates, and changing “North Hero” to “Grand Isle” in section 8 of the lease.

Andy Julow made a motion to approve the draft lease of annual rent of \$31,114 plus the determined rate of insurance, adding specifications that cleaning services are provided, there is an opt out clause for both parties, there is a term limit of 5 years, and change #16 from North Hero to Grand Isle. Second by Nathan Robinson. All in favor.

CIUUSD November 27 Meeting Minutes (appended to Defendants’ Post-Hearing Memo as Exhibit 10).

Two days later, the GISU met at North Hero School, apparently its first meeting since September 13, 2017. Plaintiff Louise Koss and Defendant Andy Julow were among those present. In relevant part, its minutes reflect the following:

Adjust the Agenda: Louise Koss asked that the GISU board presently ratify all votes from last meeting [on September 13, 2017]. Andy Julow stated it would be discussed at the next meeting, after a response has been received from the district’s lawyer. No further adjustments were made. . . .

At this time in the meeting, Louise Koss gave her resignation from the GISU Board and the Isle La Motte Board. . . .

Relocating GISU Office & GISU Curriculum Office to Grand Isle School: Andy Julow provided a map of the Grand Isle School space to be utilized. Discussion took place regarding potential savings. Andy Julow provided a handout outlining current expenses compared to future expenses at the Grand Isle School. Andy Julow provided a copy of the lease that would be used for GISU and CIUUSD. Further discussion took place. Mason Maltais made a motion to approve moving the Grand Isle Supervisory Union offices to Grand Isle School, as approved by the CIUUSD. Second by Nathan Robinson. Further discussion took place. It was noted that board members

should have more time to review the materials that were provided. It was asked if there were any other options other than Grand Isle School. Mason Maltais was asked if he would withdraw his motion. He opted not to. All in favor of moving the GISU central offices to Grand Isle School: Nathan Robinson, Andy Julow, Bridget Brisson, Mason Maltais, Dave Davis, Don Bartlett, Gary Mackres and Melanie Henderson. Those opposed: David Cain, Bentley Vaughan, Mallory Ovitt, Keri Johnson, Jane Zera, Mike Savage and Ginni Wright. Motion passes. After a short discussion, it is noted that Bridget Brisson cannot vote as a GISU member. For this reason, the motion is tied, and fails. . . .

GISU November 29, 2017 Meeting Minutes (appended to Defendants' Post-Hearing Memo as Exhibit 11).

Defendant Julow resigned his position on the CIUUSD, effective January 31, 2018. See January 22, 2018 CIUUSD Meeting Minutes (appended to Defendants' Post-Hearing Memo as Exhibit 12).

II. Discussion

From the aforementioned procedural history, the Plaintiffs argue that Defendant Julow committed the following Open Meeting Law violations: (1) he held a meeting on September 13, 2017 which lacked a quorum and on November 29, 2017, refused a request to ratify decisions made at the September 13 meeting; and (2) he cancelled CIUUSD or CISD meetings on multiple, unidentified occasions without authority or providing required notice to the public. The Court finds these claims legally insufficient for a number of reasons.

A.

As a threshold matter, it appears the Plaintiffs lack standing to bring this action. "Because standing is a necessary component of the court's subject-matter jurisdiction, it cannot be waived, and its absence can be raised at any time." Bischoff v. Bletz, 2008 VT 16, ¶ 15, 183 Vt. 235. "Without standing, the court has no jurisdiction over a petition for declaratory relief." Id. "Without the presence of an actual or justiciable controversy, a declaratory judgment is merely an advisory opinion which [the court] lacks[s] the constitutional authority to render." Negotiations Committee of Caledonia Central Supervisory Union v. Caledonia Central Education Association, 2018 VT 18, ¶ 9, 184 A.3d 236 (citation and quotation marks omitted).

The Plaintiffs have failed to show how they were aggrieved by the actions about which they complain. At oral argument, the Plaintiffs strenuously argued

that on September 13, 2017, the meeting was never formally “re-opened” when a quorum of board members finally arrived. As discussed infra, that alleged procedural impropriety does not implicate a violation of Vermont’s Open Meeting Law.

In addition, Plaintiffs repeated their complaint that Defendants canceled duly posted meetings with no advanced notice. However, the Plaintiffs have not identified which meetings were cancelled, and the record contains no suggestion that any formally-noticed meeting was cancelled in bad faith or for any reason other than an anticipated inability to meet quorum as a result of board members’ non-attendance. More importantly, the Plaintiffs are unable to identify any other compensable harm they suffered as a result of such cancelled meetings and therefore do not appear to have standing to bring this suit. See generally For the Record (FTR) Recorded Transcript of November 16, 2018 Hearing at 1:59:18 et seq. Cf. Town of Brattleboro v. Deangelo, 2005 WL 5872160 (Vt. Super. June 30, 2005) (Carroll, J.), aff’d sub nom., Town of Brattleboro v. Garfield, 2006 VT 56, ¶ 19, 180 Vt. 90 (Even where plaintiff set forth violation of Open Meeting Law, “[b]ecause Mr. K-Brooks failed to allege any injury, he was not ‘aggrieved’ under the statute and so cannot pursue a private right of action.”).

B.

In addition, it does not appear that the Defendants, at any meeting, conducted business or held votes in violation of the Open Meeting Law. Under 1 V.S.A. § 310(3)(A), a “meeting” is defined as “a gathering of a quorum of the members of a public body for the purpose of discussing the business of the public body or for the purpose of taking action.” See Burch-Clay v. Taylor, 2015 VT 110, ¶ 18, 200 Vt. 166 (quotation marks omitted); accord 1 Am. Law. Zoning § 3A:5 (5th ed.) (November 2018 Update). The Legislature’s clear delineation of a covered “meeting” as a gathering requiring the presence of a “quorum” suggests that other gatherings which do not have a quorum are ordinarily not subject to the Open Meeting Law. Cf. Burch-Clay, 2015 VT 110, ¶ 19 (“It is clear in reading the earlier and amended legislative enactments together that the Legislature did not intend for the term “meeting” to encompass the distribution by email of information for discussion at meetings. . .”).

Here, the Plaintiffs have not identified any gathering where discussion of public business occurred, or action was taken in the absence of a quorum. Even the September 13, 2017 GISU minutes reflect that board business and votes occurred after quorum was present; therefore, there is no discernible violation of § 310(3)(A)’s quorum requirement.

At oral argument, the Plaintiffs acknowledge that, in fact, after the meeting began, a quorum appeared, and that their basic objection to the September 13

meeting is that Mr. Julow did not “re-call the meeting,” but simply continued the meeting first called to order before the arrival of a sufficient number of members to constitute quorum. The Plaintiffs do not point to any provision of the Open Meeting Law which requires such a re-call to order, so it is unclear whether Plaintiffs base their objection on Roberts’ Rules of Order or some other unidentified internal procedure adopted by the board. See For the Record (FTR) Recorded Transcript at 1:39:17 et seq.

The Vermont League of Cities and Towns (VLCT), which provides guidelines to bodies such as the GISU, addresses the rules of procedure which public bodies should follow:

There is no legal obligation for municipal bodies to adopt Roberts’ Rules of Order for their meetings. In fact, Roberts’ Rules are not well-suited for small boards. VLCT has developed Model Rules of Procedure for meetings to help selectboards, committees, and commissions and other ‘public bodies.’

Rules of Procedure for Municipal Boards, Commissions, and Committees, Vermont League of Cities and Towns (June 1, 2017) (retrieved Nov. 28, 2018 and available at www.vlct.org/resource). Of course, it is advisable for a public board to adopt and follow rules covering meeting proceedings. However, in this case, the Court finds Plaintiffs’ objection to continuing the September 13, 2017 meeting without formally “re-calling” or “re-opening” at most constitutes a technical violation; it does not implicate a violation of any provision of the current Open Meeting Law because board business and votes covered by the Open Meeting Law occurred after quorum was actually present.

C.

The Plaintiffs’ requests for relief are also legally insufficient. Plaintiffs have suggested that the Defendants failed to later ratify actions allegedly taken at the September 13, 2017 board meetings. It is true that actions a public body takes in violation of the Open Meeting Law are ineffective unless later ratified at a meeting which complies with the Law. See Valley Realty & Development, Inc. v. Town of Hartford, 165 Vt. 463, 468, 685 A.2d 292 (1996). As noted supra, the Plaintiffs’ have failed to identify particular decisions from the September 13 meeting which were made without quorum present and therefore require ratification.

In addition, before suing, the Plaintiffs were required to first give the Defendants a chance to respond to or cure the alleged defect by sending written notice of the alleged violation pursuant to 1 V.S.A. § 314(b)(1) (emphasis added). The record contains no indication that Plaintiffs ever provided the Defendants required written notice of their objection to the commencement/continuation of the September 13, 2017 meeting absent a formal second “calling” of the meeting. In any

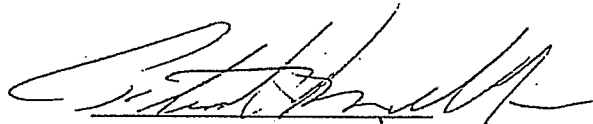
event, in light of the Court's finding that no Open Meeting Law violation occurred, proof of written notice of the alleged violation would not change the outcome of this matter. See 1 V.S.A. § 314(d).

Moreover, while Open Meeting Law permits an aggrieved party to seek injunctive or declaratory relief, on its face, it does not create a private right of action for damages. Rowe v. Brown, 157 Vt. 373, 599 A.2d 333 (1991); 1 V. S.A. § 314(b). While declaratory relief is authorized under the Open Meeting Law, that relief is only available where plaintiffs show "the threat of actual injury to a protected legal interest." Id. Accordingly, the Plaintiffs are not entitled to an award of monetary damages or declaratory relief.

Finally, to the extent the Plaintiffs, through this suit, actually seek either to voice disagreement with the Defendant boards' decisions or stifle their implementation, their appropriate remedy is a suit under Rule 75. See, e.g., Kevan v. Town of Randolph Selectboard, 2006 WL 4959619 (Vt. Super. July 2006).

The Defendants' Motion for Summary Judgment is *granted*. Judgment shall be entered for the Defendants.

Dated this 5th day of December, 2018.


Robert A. Mello, Superior Judge