



*City of New Bedford*  
**OFFICE OF THE CITY SOLICITOR**

**MIKAELA A. McDERMOTT**  
*City Solicitor*

**JANE MEDEIROS FRIEDMAN**  
*First Assistant City Solicitor*

**ERIC JAIKES**  
**KREG R. ESPINOLA**  
*Assistant City Solicitors*

**ERIC C. COHEN**  
**JOHN E. FLOR**  
**ELIZABETH LYDON**  
**THOMAS J. MATHIEU**  
**ELIZABETH TREADUP PIO**  
*Associate City Solicitors*

August 15, 2019

Louis Macedo  
14 Nina Street  
New Bedford, MA 02744  
[Louieam51@aol.com](mailto:Louieam51@aol.com)

Re: OML Complaint for New Bedford Conservation Commission

Dear Mr. Macedo,

The New Bedford Conservation Commission reviewed your August 2, 2019 Open Meeting Law complaint and referred the matter to the City Solicitor's Office for response.

You complain that the Commission (1) "made a determination without holding a public hearing." You also complain that, (2) the "Chairman made a unilateral decision that shocked his board."

The action you request the public body to take as set forth in your complaint is, "Invalidate the actions taken and impose fines and penalties as appropriate."

In order, the city responds to your complaint as follows:

1. You allege that the violation occurred between July 12, 2019 and July 16, 2019. A public hearing was held on July 2, 2019, which was noticed on June 20, 2019, on a Notice of Intent to install a seasonal floating inflatable water park (172' x 190') in the water south of the East Beach Pier. This was an after the fact filing as the floats had already been installed. The hearing was continued to July 16, 2019 as the Commission was waiting to receive a letter from the Natural Heritage and Endangered Species Program, which issued a "no take" letter that Commission Chair Craig Dixon received on July 12, 2019. At a duly noticed public meeting on July 16, 2019, the Commission voted to place conditions on the project, and on July 19, 2019 the Order of Conditions previously voted on was issued.

2. No official action was taken by the board without proper notice and deliberation. The definition of "Meeting" under the Open Meeting Law is "a deliberation by a public body with respect to any matter within the body's jurisdiction." "Deliberation" is defined as "an oral or written communication through any medium, including electronic mail, between or among *a quorum of a public body* (emphasis added) on any public business within its jurisdiction."

The decision of the Chair that you reference in your complaint was not made at a meeting by a quorum of the public body and does not constitute official action by the Conservation Commission. The only official action taken by the body was to issue an Order of Conditions that allowed placement of the rafts and anchors in the water, which had already taken place prior to filing with the Conservation Commission.

The meetings of the Conservation Commission were properly noticed, and therefore no violation of the Open Meeting Law has occurred. Regarding your requested actions that the public body take in response to your request, the Conservation Commission learned that the water park had opened at their July 16, 2019 public hearing and placed conditions on the project going forward.

Thank you for your attention to the city's conduct of its public meetings. We strive to meet our obligations under the Open Meeting Law.

Sincerely,



Elizabeth Lydon  
Associate City Solicitor

Cc: Carrie Benedon, Assistant Attorney General