

Rules

Continued from page one

is being interpreted by the (state) attorney general but I am bound to uphold it," Harsch said. His interpretation is conservative, but a little less strict than what the town has been following during much of 2005.

Last month, State Attorney General Patrick Lynch sent his three-page interpretation of his staff's three-page advisory on a specific case that reflected some of the open forum issues. Lynch's writing was addressed to Harsch, asking him to send copies to all lawyers working with town boards and agencies.

The councilors were cautioned in June to say no more than thank-you to any resident who speaks during an open forum. That rule is intended to make sure that no public body violates state law that requires public notice about agenda items.

Harsch now maintains that one or two council members — but not three or more — could say a few words on any subject introduced in open forum. They could do so "as long as it does not constitute a discussion" or any actual or appearance of a vote by a quorum of the five-member council, Harsch said.

Many viewed the original "no-comment" ruling as a form of closing the open forums. That was especially so for residents seeking answers, confirmation or guidance about facts and procedures, and not necessarily seeking a vote or consensus from the council.

Harsch said that if more than two board members want to speak, they have to vote to put the topic on their next agenda, or they could vote, if conditions warrant immediate response, for an emergency item placed on the agenda. Harsch said that Lynch seems to agree with allowing such options.

Lynch's June ruling has been a controversy on low simmer here for at least six months as a result of an interpretation given by Lauriston Parks, an associate of Town Solicitor Harsch. Parks said that an advisory by the state attorney general's office declares that

officials may not comment on, answer questions, or otherwise engage in any discussion raised during open forum.

He was giving his interpretation of a March advisory from the office of State Attorney General Patrick Lynch. A short time later, Harsch said that he agreed with Parks' interpretation. Subsequently, Lynch criticized a news report by the Providence Journal for its interpretation of Jamestown's understanding of the state advisory. That article also included data and reactions about the ruling in many other communities in Rhode Island.

"It's like the attorney general is shooting the messenger by going after the reporter," Harsch said this past week.

Complexities

Two other factors are compounding the complexity of the controversy over the interpretations of rulings, which are still unfolding.

Parks gave his ruling at a time it seemed directed especially — but not solely — at the north end residents who have long been voicing their concerns about possible groundwater contamination coming from the town's former landfill site. The town now plans to locate a new highway barn on that property.

The north end residents have been working to gain some assurance that the town will not pollute their wells, or that the town will help them if well contamination from the former landfill occurs. The land will be disturbed to varying extents by federally required "superfund" anti-pollution work and by the new highway barn, if that plan is approved by the state. Some north end residents fear that disturbing the soil at the old landfill site will stir up long-buried pollutants.

The other factor is that Harsch, the town's lead solicitor, already has opened his campaign as a candidate to take the job of attorney general away from Lynch.

"I'm very mindful of that," Harsch said, "and I will keep my roles as solicitor and as candidate as clearly defined as they need to be."

Stricter still

Even stricter than the rulings for meetings of town boards and agencies is the original March ruling that dealt with a case involving the Exeter-West Greenwich Regional School District. The attorney general and his staff maintain that school committees are subject to even stricter rules that block committee discussion of public comments not specifically listed on the agenda for the meeting.

Harsch has not addressed the school aspect of the rulings, all reflecting interpretations of the state Open Meetings Act.

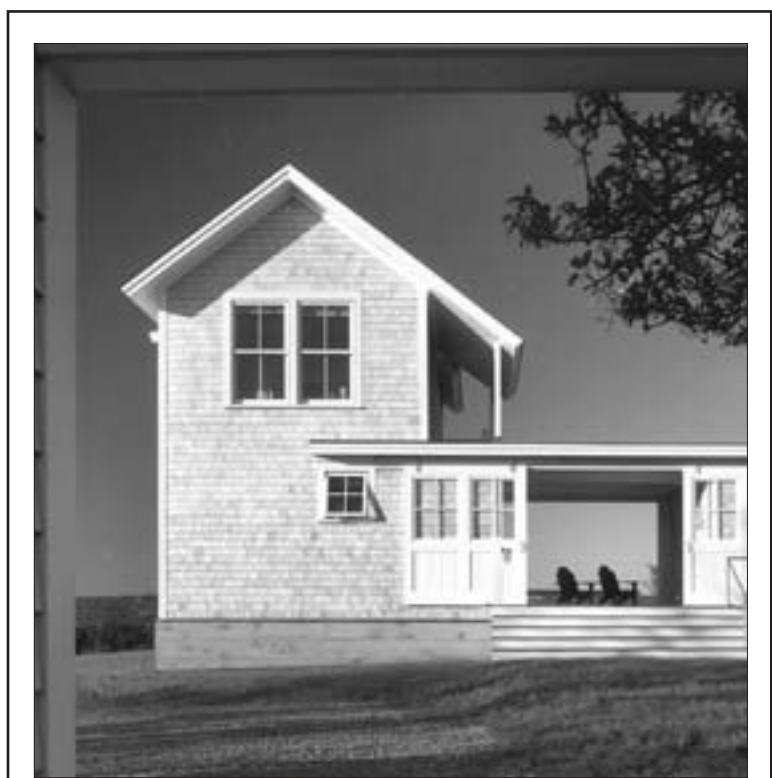
Lynch's interpretation has "certainly created some serious confusion. His explanation does not wash in terms of clarifying (rules about) public input," Harsch said.

"I am a strong believer in opportunity for exchanges between citizens and elected officials. If we are to have lots of local government, we need lots of opportunity for exchange," he said.

"It is proper that we give notice. Notice promises to notify the public when action is contemplated. Discussion can be more relaxed, manageable, and respectful. We need more opportunity to take advantage of flexibility. . . . I would rather err on the side of the less stringent and not on gags on opportunities for (discussions)," Harsch said. However, he added, his instructions to the Jamestown councilors will be to "proceed with the better part of caution if they want to discuss topics raised in open forum" by voting to put the matters on the agendas of future meetings. "I would err with caution to go on the side of formality and abide with the law as I have always," Harsch said.

Harsch then said he was talking as a candidate for the state attorney job in the next November election. He said open government "will be a big issue in my campaign. Patrick Lynch is an immature person in a demanding job. He went after the messenger who was correct in what he reported. A grown-up would admit he or his staff was wrong, clarify the matter, and take responsibility. Instead, he took perverse action, with an elaborate process, a long letter, and criticism of the reporter."

The attorney general plays a major role that has many consequences, Harsch said. "I do not



Estes wins two architectural awards

Two houses by Jamestown architect Jim Estes of Estes/Twombly Architects were recently recognized by the Rhode Island Chapter of the American Institute of Architects at its annual awards ceremony. The O'Toole House (pictured above), a renovation of a 1960s pre-fabricated kit house on Block Island, won an honor award. The von Mehren House, renovation/addition to a small 1950s cottage in Bronxville, N.Y., won a merit award. Both projects were noted for the radical changes made while working within the framework of the existing houses. Estes/Twombly Architects is a residential firm located in Newport. Jim Estes and Peter Twombly are partners. Photo by Warren Jagger

believe that he (Lynch) understands the importance of his office," he noted.

The Providence Journal article in mid-December detailed comments made by the residents and officials of several towns. The opinions said that Lynch's rulings was having a negative impact on access to government, blocking quick responses, deflecting questions from residents, insulating officials from those they represent, denying citizens meaningful input, and creating an antithesis of open government.

Lynch said the Journal story was misleading, caused confusion, and perpetuated misunderstanding. The attorney general said that his job was to explain the state General Assembly's law, not to create a new law. He said the law is intended to prevent discussions and actions on issues that have not been given public notice, so that citizens could be aware of them. He also said his staff never said officials "must sit

silent" at open forums. Officials in other towns, including North Kingstown, said Lynch's staff have advised them "to say nothing" at open forums.

Lynch said the law requires a "balance between a citizen's ability to provide public comment and receive feedback, as well as the public's right to receive notice of matters that will be discussed."

Although the attorney general wrote that there can be no collective discussion, he also said that "a majority of a public body (can) amend its agenda at any time during a public meeting . . . for informational purposes only and may not be voted on" except to protect the public or refer the matter to a committee or official.

The March memo from Lynch's staff said that school committees are governed by a stricter rule that requires publicly posting agenda items 48-hours before a meeting takes place. His staff noted that less than a quorum of members could respond to citizens during open forum portions of a meeting, but the staff memo advises against such practice for fear that "an isolated comment could easily be the spark that ignites an ensuing (illegal) discussion."

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