STATE OF NEW HAMPSHIRE
SUPERIOR COURT

GRAFTON, SS. Docket No. 215-2024-CV-00156

Yaakov Abuhav

v.

Town of Grafton

ORDER ON THE MERITS

The plaintiff, Yaakov Abuhav, brings an RSA 91-A Right-to-Know action against the defendant, the Town of Grafton ("the Town"). (Index #1.) Mr. Abuhav's claim arises from a June 18, 2024 Board of Selectmen ("Board") meeting, and he alleges that he and other members of the public could not adequately hear the proceedings at that meeting. (Id.) The Town filed an answer. (Index #7.) Mr. Abuhav amended his complaint with an additional request for relief under RSA 91-A:8, IV (Index #12), to which the Town answered (Index #13). The Court held a bench trial on April 16, 2025. Having considered the evidence, parties' arguments, and applicable law, the Court finds and rules as follows.

Factual Background

The Court draws the following facts from the bench trial record. On June 18, 2024, the Board held a regularly scheduled meeting at the fire station. At that time and at all other times relevant to the case, Leif Hogue was the Board chair, and Ed Grinley and Steve Darrow were the two other Board members. Mr. Hogue testified that the Board generally held its meetings at the town hall. However, because the town hall's ramp was unusable for some time in 2024, Mr. Hogue moved Board meetings to the fire station to ensure accessibility. Mr. Hogue chose the fire station as an alternate venue

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because it was big enough to hold a crowd. The Town uses the fire station for town meeting, and the Board has used the fire station in the past for meetings.

Mr. Hogue testified that one of the Board's many roles is to set up furniture before meetings. During the June 18 meeting, the Board sat around a circular table about five to ten feet from the first row of chairs. Audience members sat scattered throughout the rows of chairs, with at least some of the chairs in the first few rows empty. The outdoor temperature was around 90 degrees, and the fire station was uncomfortably hot. The building had no air conditioning, and ceiling fans ran to circulate air. The fans created some level of background noise.

During the meeting, Mr. Abuhav stated that it was hard to hear. (Ex. 9 at 00:42.[1]) Mr. Hogue heard the comment and did not take any action at that time. A few minutes later, Mr. Abuhav said "it's impossible to hear anything." (Id. at 06:12.) Mr. Hogue testified that he heard Mr. Abuhav's second comment, raised his voice to compensate for the ceiling fans' noise, and believed that the increased volume was sufficient for the public to hear. Mr. Hogue explained that he was reluctant to turn the fans off because he was concerned about making the audience uncomfortable.

Mr. Abuhav stated for the third time that he could not hear the Board members. (Id. at 27:30.) Mr. Hogue responded, "you don't need to hear." (Id. at 27:34.) Mr. Hogue testified that he responded that way because he was hot, agitated, and trying to get through the meeting as quickly as possible. Then, the Board polled the audience, and at least one member stated that she also could not hear. Later in the meeting, Mr. Darrow asked the audience, "could you hear us?" Joe Braley, an audience member, stated that

[1] Mr. Abuhav video recorded the June 18, 2024 meeting. (Ex. 9.) He is not affiliated with the Town and records meetings on a volunteer basis as a concerned citizen, as his right.

he could not, and he "was sitting right there." (Id. at 40:00.) Other than Mr. Braley's response, Mr. Darrow interpreted the audience's reaction as affirming that they could hear at least him individually. Mr. Hogue testified that it was clear at this point that the audience was having a hard time hearing the Board in general and did not recall if the Board took further steps to remedy the situation. At the end of the meeting during public comments, Mr. Abuhav stated for a fourth time that he could not hear during the meeting. (Id. at 52:58.)

LeeWhay Pasek and Maureen O'Reilly attended the June 18 meeting as audience members. Ms. Pasek sat about five to ten feet from the Board. She testified that she had difficulty hearing the Board throughout the entire meeting. Ms. Pasek did not construe Mr. Abuhav's comments during the meeting as being disruptive. Each time he said that he could not hear, she also could not hear. When she was asked during the meeting if she could hear, she stated that she could hear Mr. Darrow but not Mr. Hogue or Mr. Grinley. She testified that as far as she knew, Mr. Abuhav had never disrupted a Board meeting. Ms. O'Reilly testified that she could make out bits and pieces of the meeting. Ms. O'Reilly could hear Mr. Darrow but not the other Board members.

Mr. Darrow and Mr. Grinley both heard Mr. Abuhav express his concerns. Mr. Darrow testified that other than trying to speak more clearly, the Board did not take other actions to make the meeting more audible because they believed it was audible. Mr. Darrow stated that he did not interpret Mr. Abuhav's comments as disruptive. Mr. Darrow further stated that he interpreted Mr. Hogue's response as offhand, inappropriate, and the product of a long, hot, day. Before June 18, Mr. Darrow had not heard complaints about audibility in the fire station. Mr. Darrow testified that although the Town does not routinely amplify Board or other meetings, usually no audibility

issues exist. He explained that the Town does not own amplification equipment, no public requests or petitions have come up to purchase such equipment, and the Town has never asked the voters to approve such a purchase. Mr. Grinley has been on other Town boards and testified that he never heard similar audibility concerns. He further testified that he does not know whether Mr. Hogue made his comments in bad faith.

Mr. Hogue testified that it is the Board's responsibility to hold meetings open to the public. Mr. Hogue stated that as Chair, he conducts meetings and ensures compliance with open meeting requirements. Pursuant to those duties, he attended an eight-hour Right-to-Know webinar hosted by the New Hampshire Municipal Association in April 2024. Mr. Hogue said that one of his priorities is to ensure that the public can hear during meetings. He testified that he did not apologize at the June 18, 2024 meeting for the audibility issues, that the meeting was not audible as required by the Right-to-Know law, and that his response to Mr. Abuhav's comment was unreasonable. Mr. Hogue explained that he responded the way he did due to the heat and feeling easily agitated after a long, hot, day of haying.

On June 21, 2024, the Board held a nonpublic meeting at the town offices outside of its regular meeting schedule for purposes of considering legal advice. The meeting started with a public session. Then, the Board moved to enter the nonpublic session and asked Mr. Abuhav to leave. Mr. Abuhav did not leave after several requests, and the Board called the police. Grafton Police Chief Mitchell Briggs responded. Mr. Abuhav explained to Chief Briggs his concern that the Board had not conducted a roll-call vote to enter nonpublic session. Mr. Abuhav also explained his dissatisfaction with the June 18 meeting. Mr. Hogue responded that "our meetings are for us, not for you guys"

and "you don't have to hear everything, we have to hear everything." (Ex. 20 at 25:25.) The Board conducted a roll-call vote, and Mr. Abuhav left on his own accord.

Mr. Hogue testified that he made his June 21 statements with respect to nonpublic sessions only, not regular public sessions. He further noted that the June 21 situation was representative of Mr. Abuhav's past interactions with the Board but could not specify those past interactions. He explained that such interactions led him to believe on June 18 that when Mr. Abuhav spoke up about his issues hearing, he was not doing so in good faith.

On July 2, 2024, the Board held its regular meeting at the fire station. Mr. Hogue apologized for his statements at the June 18 meeting. Mr. Hogue testified that at this meeting, the Board turned the fans off and spoke at a louder volume to ensure everyone could hear. On August 6, 2024, the Board held its regular meeting back at the town hall. The agenda included reviewing business conducted at the June 18 meeting. The Board also voted to move meetings back to the town hall.

Analysis

The purpose of New Hampshire's Right-to-Know law is "to ensure both the greatest possible public access to the actions, discussions and records of all public bodies, and their accountability to the people." RSA 91-A:1. The law provides that "all meetings, whether held in person, by means of telephone or electronic communication, or in any other manner, shall be open to the public." RSA 91-A:2, II. RSA 91-A:8 provides several remedies for Right-to-Know violations. Accordingly, the Court considers in turn (1) whether the Town violated the Right-to-Know law, and, if so, (2) whether Mr. Abuhav is entitled to his requested relief.

"In a civil action the burden of proof is generally on the plaintiff to establish its case by a preponderance of the evidence." Nashua Hous. Auth. v. Wilson, 162 N.H. 358, 361 (2011) (quotations omitted). In other words, the plaintiff must produce sufficient evidence to show that their facts and conclusions are more likely than not. See Petition of M.P., 176 N.H. 23, 29 (2023) ("A preponderance of the evidence means there is sufficient evidence to prove that a fact or conclusion is not only possible, but also probable.") (quotations and citation omitted). That means that to prevail in this case, Mr. Abuhav must prove that, more likely than not, the Town violated the Right-to-Know law and that he is entitled to the requested relief.

I. Right-to-Know Violation

Mr. Abuhav claims that the Town violated the Right-to-Know law when the Town conducted the June 18, 2024 meeting in a way that was not audible to the public and did not address the issue after public comments about audibility. The Town agrees with Mr. Abuhav that under the law, the Town bears the responsibility to ensure that public meetings are audible. However, the Town disputes that the June 18 events rose to the level of a Right-to-Know violation.

The Right-to-Know law requires public meetings to be audible to an in-person audience. The law does not have a blanket provision about audibility, but the section on hybrid and remote meetings provides that

> [e]ach part of a meeting required to be open to the public shall be audible or otherwise discernable to the public at the location specified in the meeting notice as the location of the meeting. Each member participating electronically or otherwise must be able to simultaneously hear each other and speak to each other during the meeting, and shall be audible or otherwise discernable to the public in attendance at the meeting's location.

RSA 91-A:2, III(c). Although the audibility requirement is located within the Right-to-Know law's remote meeting section, the Court determines that the audibility requirement applies to all public meetings, regardless of any use of remote meeting technology. See Appeal of New England Police Benevolent Ass'n, Inc., 171 N.H. 490, 493 (2018) (noting that courts "construe all parts of a statute together to effectuate its overall purpose and to avoid an absurd or unjust result.")

In the open meeting context, "audible or otherwise discernible" means not just that an audience member can hear that the meeting is occurring. Rather, consistent with the Right-to-Know law's purpose, "audible" must mean that the audience can hear enough of the meeting to understand its substance and participate as appropriate. See id. (favoring statutory construction that effects a statute's purpose); RSA 91-A:1 (stating purpose of ensuring "the greatest possible public access;" RSA 91-A:2 (stating that all meetings "shall be open to the public," whether participating in-person or remotely).

Here, the Court concludes that the Town violated the Right-to-Know law. As shown by the witness testimony—all of which the Court found credible—and the parties' arguments, the parties generally agree on the facts of the case. As Mr. Hogue testified, the Board bears the responsibility to follow the law and ensure that public meetings are audible. See id. Thus, when the Board continued the June 18 meeting without addressing the audibility concerns, it violated the law. While the Town presented evidence of the Board members' belief that the meeting was audible, the Court finds that such a belief—even if genuine—does not meet the Right-to-Know law's audibility requirement. In contrast, Mr. Abuhav met his burden by presenting evidence of his own complaints, two witnesses who testified to their difficulty hearing, and evidence of Mr. Braley's difficulty hearing.

The Town points to several mitigating facts in support of no violation, including that the meeting was videotaped, the minutes were made public shortly afterwards, and all the documents that the Board reviewed have been available at all times. The Town also points to its corrective measures. Those include Mr. Hogue's July 2 apology, turning off the fans and instructing the Board to speak more loudly at the July 2 meeting, having Mr. Darrow report on the June 18 meeting at the August 6 meeting, and moving Board meetings back to the town hall as of August 6. While the Court recognizes the mitigating facts and commends the corrective measures, the Right-to-Know law's requirements do not account for such efforts. No exceptions exist for subsequent compliance, minor and technical violations, or good-faith efforts. See generally RSA 91-A:2. The Town bears the responsibility to ensure audibility at public meetings, and it did not do so at the June 18, 2024 Board meeting. Accordingly, the Court determines that the Town violated the Right-to-Know law. See RSA 91-A:2, III(c).

II. Right-to-Know Remedies

Having determined that the Town violated the Right-to-Know law, the Court next considers whether Mr. Abuhav is entitled to any of his requested relief. The Right-to-Know law provides for several remedies. RSA 91:8. Out of those options, Mr. Abuhav requests each of the four remedies applicable to his case:

- under RSA 91-A:8, I, that the Town reimburse Mr. Abuhav's costs incurred to bring this action (Index #1 Prayer A);
- under RSA 91-A:8, III, that the court invalidate any decisions made at the June 18, 2024 meeting and require the Town to reschedule that business (id.);
- under RSA 91-A:8, IV, that Mr. Hogue to personally reimburse the Town for the fees and costs it incurred to defend this action (Index #12); and

- under RSA 91-A:8, V, that the court enjoin the Town from committing future violations and require the Board to take Right-to-Know training (Index #1 Prayer A).

The Court considers each of these remedies in turn.

RSA 91-A:8, I provides that if a public entity violates the Right-to-Know law, the entity "shall be liable for reasonable attorney's fees and costs incurred in a lawsuit under this chapter, provided that the court finds that such lawsuit was necessary in order to enforce compliance with the provisions of this chapter or to address a purposeful violation of this chapter." The law further provides that "[f]ees shall not be awarded unless the court finds that the public body, public agency, or person knew or should have known that the conduct engaged in was in violation of this chapter or if the parties, by agreement, provide that no such fees shall be paid." RSA 91-A:8, I.

Here, the Court concludes that Mr. Abuhav meets his burden of proof to show that the lawsuit was necessary to enforce compliance. Mr. Abuhav filed his complaint on June 24, 2024, and the Town offered no evidence to suggest that the Board was going to correct the audibility issues on its own prior to that date. Thus, Mr. Abuhav is entitled the costs he incurred associated with the court proceedings. Mr. Abuhav did not request attorneys' fees, nor is he entitled to them because he proceeded pro se. See generally Emerson v. Town of Stratford, 139 N.H. 629 (1995). Therefore, the Court GRANTS Mr. Abuhav's requested relief under RSA 91-A:8, I and the Town must pay his costs.

RSA 91-A:8, III provides that a court "may invalidate an action of a public body or public agency taken at a meeting held in violation of the provisions of this chapter, if the circumstances justify such invalidation." Here, the circumstances do not justify invalidation. The Board made the June 18, 2024 meeting minutes available shortly after the meeting, and Mr. Darrow reviewed the June 18 meeting at the August 6 meeting.

Further, neither party presented evidence that the audibility issues affected the outcome of any decisions that the Board made at the June 18 meeting. Therefore, because no circumstances justify invalidating the Board's actions at the June 18 meeting, the Court DENIES Mr. Abuhav's requested relief under RSA 91-A:8, III.

RSA 91-A:8, IV requires a court to impose civil penalties if the court finds that a public official violated the Right-to-Know law "in bad faith." The statute further provides that upon such a finding, courts may order the public official to personally reimburse the public entity for fees and costs paid pursuant to RSA 91-A:8, I. The parties agree as to the substance of Mr. Hogue's June 18 and 21 statements but disagree as to whether they reflect bad faith. Mr. Abuhav contends that clear meaning of Mr. Hogue's statements shows bad faith, as they clearly repudiated Right-to-Know's audibility requirement, and no one could interpret the statements as a joke. Mr. Abuhav further contends that the fact that Mr. Hogue attended Right-to-Know training establishes bad faith, because it shows that he knows better than to make such a statement. Mr. Abuhav also alleges a pattern of similar statements prior to the June 18 meeting. The Town responds that Mr. Hogue's statements do not reflect bad faith, just understandable agitation after a long, hot day and the type of poor judgment that sometimes accompanies frustration.

Here, the Court determines that the evidence does not show bad faith. Mr. Abuhav alleges a pattern of behavior but no offers no evidence to support specific instances. The Court finds credible Mr. Hogue's explanation that he made the June 18 statement due to his long day of haying, the oppressive heat, and personal agitation. The Court is further persuaded by his July 2 apology. The Court also finds credible Mr. Hogue's explanation that his June 21 statements occurred in the context of the Board

entering a nonpublic session. The Court makes these findings in part based upon the Court's personal observation of Mr. Hogue's demeanor while testifying as a witness and after review of the video evidence. In short, no evidence establishes Mr. Hogue's bad faith. Therefore, the Court DENIES Mr. Abuhav's requested relief under RSA 91-A:8, IV, and Mr. Hogue does not have to reimburse the Town.

RSA 91-A:8, V provides that a court "may also enjoin future violations of this chapter, and may require any officer, employee, or other official of a public body or public agency found to have violated the provisions of this chapter to undergo appropriate remedial training, at such person or person's expense." The Court determines that injunctive relief is not warranted because the Town and Board appear—to this Court's satisfaction—to have thoroughly addressed the audibility issue at Board meetings. The Court declines to require additional training. Therefore, the Court DENIES Mr. Abuhav's requested injunctive relief under RSA 91-A:8, V.

Conclusion

The Court is reticent to set a precedent that one isolated audibility event constitutes a Right-to-Know violation. Although Mr. Abuhav successfully enforced the Right-to-Know law, the Court observes that the Board was forced to hire counsel at significant taxpayer expense. From a cost-benefit analysis, the Court questions whether litigation of this nature should be encouraged. Again, the Court does find that Mr. Abuhav's lawsuit was "necessary" to enforce compliance, but the Court also observes that less costly alternatives to litigation (e.g., a written complaint, cumulative social media outcry, personal discussions) may very well have achieved the same ultimate result, with far less expenditure of overall resources. It is not necessarily this Court's province to evaluate the advisability of litigation, nor to dictate how towns should

conduct their affairs. However, the Court further observes that if the availability of public resources continues its current downward trend, perhaps scarce resources could be employed in a more efficacious manner.

Consistent with this order, the Court **GRANTS** Mr. Abuhav's petition with respect to his requested relief under RSA 91-A:8, I and **DENIES** all other requested relief. The court **ORDERS** Mr. Abuhav to file an affidavit of his costs within 30 days from the notice of decision associated with this Order, for this Court's review, audit, and approval.

SO ORDERED.

Dated: May 23, 2025

Hon. Jonathan S. Frizzell
Presiding Justice

Clerk's Notice of Decision
Document Sent to Parties
on 05/23/2025