SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

In the Matter of the Application of	:	
NORMAN S. ROSENBLUM, as MAYOR OF THE VILLAGE OF MAMARONECK,	:	
Petitioner,	:	Index No.: 3054/16
For a Declaratory Judgment for an Order Declaring the September 6, 2016 Village Board Meeting Void	:	Assigned to: Justice Lawrence H. Ecker
-against-	:	
VILLAGE CLERK OF THE VILLAGE OF MAMARONECK and THE VILLAGE OF MAMARONECK BOARD OF TRUSTEES	:	
-and-	:	
WESTCHESTER COUNTY BOARD OF ELECTIONS,	:	
Respondents.	:	

RESPONDENTS' MEMORANDUM OF LAW

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PRELIMINARY STATEMENT

Respondents Village Clerk of the Village of Mamaroneck and The Board of Trustees of the Village of Mamaroneck submit this memorandum of law in opposition to the petition of Mayor Norman Rosenblum.

SUMMARY OF ARGUMENT

Mayor Rosenblum asks this Court to set aside two local laws even though they were adopted by a majority vote of the Board of Trustees at the conclusion of a duly-noticed public meeting at which public hearings were held on those laws. Even though he had actual notice of the meeting, was present and voted, he claims that the laws are invalid solely because the Village Clerk failed to give separate notice of a special meeting of the Board of Trustees, after the public hearing, to adopt the laws. The petition must be dismissed, for four reasons. First, the Mayor does not have standing to assert the claim that he makes. Second, due the Mayor's delay in asserting his claim, the petition must be dismissed for laches. Third, the statutory notice requirements for holding a public meeting or adopting a local law were satisfied. And fourth, even if there were a technical failure to comply, the undisputed facts show that the failure to notice a separate special meeting was inadvertent and an inadvertent failure to give notice is not a lawful basis for invalidating an action.

ARGUMENT

I

Because Mayor Rosenblum was not injured by the alleged failure of notice, he has no standing to claim that the local laws are invalid on that basis.

"Standing is, of course, a threshold requirement for a plaintiff seeking to challenge governmental action." *New York State Ass'n of Nurse Anesthetists v. Novello*, 2 N.Y.3d 207, 211

(2004). If the party who brings the action does not have standing, the action must be dismissed. The Court of Appeals recently made this clear in *Ass'n for a Better Long Island, Inc. v. N.Y. State Dep't of Envtl. Conservation*, 23 N.Y.3d 1 (2014). The Court stated:

> Standing is a threshold determination, resting in part on policy considerations, that a person should be allowed access to the courts to adjudicate the merits of a particular dispute that satisfies the other justiciability criteria" (*Society of Plastics Indus. v. County of Suffolk,* 77 N.Y.2d 761, 769, 570 N.Y.S.2d 778, 573 N.E.2d 1034 [1991]). . . . These requirements ensure that the courts are adjudicating actual controversies for parties that have a genuine stake in the litigation *(see Society of Plastics,* 77 N.Y.2d at 773–774, 570 N.Y.S.2d 778, 573 N.E.2d 1034).

23 N.Y.3d at 6.

Standing has two essential elements. "Petitioner has the burden of establishing both an injury-in-fact and that the asserted injury is within the zone of interests sought to be protected by the statute alleged to have been violated (*see Society of Plastics,* 77 N.Y.2d at 772–773, 570 N.Y.S.2d 778, 573 N.E.2d 1034)." Id.

Mayor Rosenblum fails on both counts. To begin with, he is not within the zone of interest that the public notice statutes protect. The purpose of the public notice requirements of the Municipal Home Rule Law and the Public Officers Law is to protect the public, not members of the Board of Trustees, like Mayor Rosenblum. For that reason alone, he cannot sue to enforce the public meeting statutes.

More important, Mayor Rosenblum knew that there was going to be a special meeting and knew that there was going to be a vote on Local Laws T and U at the conclusion of the public hearing on September 6, 2016. He was actually there and voted. Thus, even if there was a failure of notice, Mayor Rosenblum has suffered no injury-in-fact and therefore has no standing to complain about any failure of notice. See *Matter of Snyder Dev. Co., Inc. v. Town of Amherst Town Board*, 12 A.D.3d 1092 (3d Dep't 2004); *Matter of Brew v. Hess*, 124 A.D.2d 962 (3d

Dep't 1986); *Matter of Sutton v. Board of Trustees of the Village of Endicott*, 122 A.D.2d 506, 508 (3d Dep't 1986); *Matter of Zartman v. Reisem*, 59 A.D.2d 237, 242 (4th Dep't 1977); *Dillon v. Town of Montour*, 18 Misc. 3d 1109(A), at *12 (Sup. Ct., Schuyler County, 2007) (because board members received actual notice of and attending meeting, "no failure of actual notice occurred and no prejudice resulted").

Nor can Mayor Rosenblum sue to protect the interest of unnamed parties who might not have received notice of the meeting and were not there.

> A plaintiff generally has standing only to assert claims on behalf of himself or herself. Although there are situations in which representative or organizational standing is permitted (*see* CPLR 1004; *Rudder v. Pataki,* 93 N.Y.2d 273, 278, 689 N.Y.S.2d 701, 711 N.E.2d 978; *Matter of Dairylea Coop. v. Walkley,* 38 N.Y.2d 6, 9, 377 N.Y.S.2d 451, 339 N.E.2d 865), one does not, as a general rule, have standing to assert claims on behalf of another (*see Society of Plastics Indus. v. County of Suffolk,* 77 N.Y.2d 761, 773, 570 N.Y.S.2d 778, 573 N.E.2d 1034; *Matter of Hebel v. West,* 25 A.D.3d 172, 175, 803 N.Y.S.2d 242).

Caprer v. Nussbaum, 36 A.D.3d 176, 182 (2d Dep't 2006). Mayor Rosenblum also cannot sue on behalf of the Village without the approval of the Board of Trustees, which he dos not have here, see *Matter of Giunta v. Avena*, 51 Misc. 3d 436, 438–39 (Sup. Ct., Nassau County, 2016), or on behalf of the Village's residents. See *Incorporated Vill. of Northport v. Town of Huntington*, 199 A.D.2d 242, 243–44 (2d Dep't 1993).

II

Mayor Rosenblum's delay in asserting his claim requires that the petition be dismissed for laches

Mayor Rosenblum knew all the facts necessary to his claim on September 6th. He, in fact, asserted at the meeting that, in his view, the meeting was illegal. But he waited six weeks – until three weeks before the election, when ballots had already been printed – to commence this action. That alone requires dismissal of the petition.

Where neglect in promptly asserting a claim for relief causes prejudice, that neglect bars a remedy on the basis of laches. See *Elefante v. Hanna*, 40 N.Y.2d 908, 908-09 (1976) (laches barred petitioner's challenge of common council's approval of new city charter when petitioner did not commence action for over one month); *Schulz v. State*, 81 N.Y.2d 336, 348 (1993) (constitutional challenge to state statutes barred by doctrine of laches as prejudice caused to adversary during lapse in bringing action); *Birch Tree Partners, LLC v. Zoning Bd. of Appeals of Town of East Hampton*, 106 A.D.3d 1083, 1084 (2d Dep't 2013) (petitioner's challenge barred by doctrine of laches as adversary prejudiced by petitioner's undue delay in challenging conduct).

Elefante is virtually on all fours with this case. In *Elefante*, the petitioner brought a proceeding pursuant to CPLR Article 78 to enjoin the submission at the general election of a proposition as to whether the proposed new city charter should be adopted. 40 N.Y.2d 908, 908-09. The Common Council had adopted the resolution approving the new city charter on August 26, 1976; the petitioner commenced the proceeding 43 days later, on October 8, 1976. The Court of Appeals dismissed the proceeding, holding that "[t]o have waited until October 8, 1976, shortly before the general election worked prejudice to the respondents and may not be countenanced." *Id.* at 909.

Here, Mayor Rosenblum knew on September 6, 2016 that the Board of Trustees had adopted the local laws. He attended and spoke at the meeting and voted against the laws. Yet he waited 41 days, until October 17, 2016, a date nine days closer to the general election than in *Elefante*, to commence this Article 78 proceeding. This delay of nearly six weeks, like the delay in *Elefante*, has caused prejudice to respondents and the voters and "may not be countenanced."

Schulz presents a similar situation. In *Schulz*, a group of citizens commenced an Article

78 proceeding challenging certain state financing schemes. 81 N.Y.2d at 342. The challenged legislation was signed into law on May 25, 1990, but the proceeding was not commenced until April 29, 1991. *Id.* at 348. During this time, in reliance on the presumed constitutionality and regularity of the laws, over $377 million in bonds were issued and sold, sales of state properties were completed, and proceeds were deposited into the State's General Funds. *Id.* at 349. Thus, great prejudice would "be inflicted on the State and its citizens at large when financial transactions of such magnitude and destabilizing impact are at stake and may be upset." *Id.* at 349-50.

Elefante and *Schulz* require that Mayor Rosenblum's petition be dismissed for laches. The Court should apply the doctrine of laches here and dismiss the petition.

III

Mayor Rosenblum has failed to establish any failure to give due notice, let alone an intentional failure, which is what is required before the Court may invalidate the action taken by the Board of Trustees

Mayor Rosenblum claims that the September 6th meeting of the Board of Trustees violated Municipal Home Rule Law § 20, Public Officers Law § 104 and the Rules of Procedure of the Board of Trustees of the Village of Mamaroneck. He is wrong on all three counts.

A. The five days' notice given by the Village Clerk satisfied the requirements of Municipal Home Rule Law § 20(5)

Mayor Rosenblum contends that the Village Clerk failed to provide five days' advance notice of the public hearing on Local Laws U-2016 and T-2016, as required by Municipal Home Rule Law § 20(5), because the public notices of the hearing, setting forth the correct time, place and date, supposedly were not issued until the date on which the hearing occurred. See petition at

¶¶ 6-9, 16; petitioner's affidavit at ¶ 8.[1] This is simply false. As detailed in the affidavit of Deputy Village Clerk Sally Roberts and confirmed by the notices themselves, the Village Clerk's Office posted the notices of the public hearing, including notice of the correct time and date of the hearing, on Facebook and on the Village's public website on August 31, 2016. See Roberts aff. at ¶¶ 5-10. Roberts also sent corrected notices of the public hearing to the press via email on the same day. Accordingly, the Clerk's Office gave the public five days' notice of the proper time, place and nature of the hearing, thereby achieving full compliance with Municipal Home Rule Law § 20(5).

To the extent that Mayor Rosenblum means to suggest that the Village Clerk also had to, and failed to, timely provide notice of the public hearing via some other method, such as a television broadcast or newspaper publication, his claim is belied by the plain language of the statute. Under Municipal Home Rule Law § 20(5), where, as here, a local government does not have an elective chief executive officer vested with the power to approve or veto local laws, *see* Municipal Home Rule Law § 2(4), "no local law shall be passed by the legislative body until a public hearing thereon has been had before such body." Municipal Home Rule Law § 20(5). The statute further provides that "[s]uch a public hearing . . . shall be on such public notice of at least three days as has been or hereafter may be prescribed by this section upon five days' notice or, in the event such a local law prescribing the length of notice is not adopted, upon five days' notice." Municipal Home Rule Law § 20(5). Aside from requiring notice of a public hearing on a local law to be timely and provided to the public, the statute says nothing about the contents of

[1] Petitioner also quotes Municipal Home Rule Law § 20(1) – inaccurately citing it as section 20(i) – in his petition (petition ¶ 13). But it is unclear whether or why petitioner believes that statute, which simply provides that local laws must be passed by a majority vote of the relevant legislative body, was violated here. *See* Municipal Home Rule Law § 20(1). In any event, given that the Board approved Local Laws U-2016 and T-2016 by majority votes, it clearly did not violate Municipal Home Rule Law § 20(1).

the notice or the means by which it must be provided. Municipal Home Rule Law § 20(5) thus plainly does not require a local government to publish notice in any particular place or media.

Indeed, in *Morin v. Foster*, 93 Misc.2d 10, 13 (Sup. Ct., Monroe County, 1978), the court made this very point. There, the Monroe County Legislature published notice of a public hearing on a local law in a newspaper, but the newspaper had not been designated as an official newspaper for the publication of local laws and public notices pursuant to a provision of the County Law that requires County governments to make such a designation. *See Morin*, 93 Misc.2d at 12-13. Opponents of the local law asserted that, because the notice of the public hearing on the law had not been included in an official paper, the notice was void, and that therefore the County legislature had not provided valid timely notice of the hearing under Municipal Home Rule Law § 20(5). *See id.* The court rejected the challengers' argument. After interpreting the County Law to require mere *designation* of an official newspaper rather than *publication* of every notice of a hearing on a local law in such a newspaper, the court concluded that Municipal Home Rule Law § 20(5) likewise does not require publication of notice of a public hearing in an official newspaper. Specifically, the court observed that because Municipal Home Rule Law § 20(5) "d[oes] not direct the exact method of notice, the inadvertent failure of the County Legislature to designate as official newspapers the newspapers in which the notice was published [wa]s not a jurisdictional defect [sic]" in the local law. *Id.* at 13.[2] For the same reason, here, Municipal Home Rule Law § 20(5) did not compel the Board or the Village Clerk to publish notice of the public hearing on Local Laws U-2016 and T-2016 in a newspaper or any

[2] Although the Court loosely referred to the issue before it as whether the statute was invalid based on a "jurisdictional defect" in the statute, *id.* at 13, the Court was plainly addressing the same issue as the one presented in the instant case, namely whether the local law must be invalidated under Municipal Home Rule Law § 20(5) based on the failure of the local government to timely publish notice of the public hearing in a newspaper.

other particular medium. The posting of timely notice on public websites, with additional notice sent to the media, was enough.

Moreover, generally, under Municipal Home Rule Law § 20(5), notice of a public hearing is proper, regardless of any technical shortcomings in form, timing or content, if it adequately serves the statutory purpose of "insur[ing] an opportunity for public input via a public hearing prior to any final approval of a local law," *Matter of Braxton v. Kuwik*, 114 Misc.2d 668, 670 (Sup. Ct., Erie County, 1982), and is not "deceptive, misleading [or] framed to give a false concept of the text or intent of the local law." *Garlen v. Glens Falls*, 17 A.D.2d 277, 278 (3d Dep't 1962). *See Matter of MHC Greenwood Village NY, L.L.C. v County of Suffolk*, 18 Misc. 3d 312, 324 (Sup. Ct., Nassau County, 2007), *aff'd in part and modified in part on other grounds*, 58 A.D.3d 735 (2d Dep't 2009); *Morin v. Foster*, 92 Misc. 2d 10, 13 (Sup. Ct., Monroe County, 1978). *Cf. Alscot Investing Corp. v. Laibach*, 65 N.Y.2d 1042, 1044 (1985); *41 Kew Gardens Road Assoc. v. Tyburski*, 124 A.D.2d 553, 554 (2d Dep't 1986). Since the notice here was widely disseminated by posting within the Village and on publicly available websites and email blasting, it apprised the public of the proper time, date and place for the hearing, and it outlined the general nature of Local Laws U-2016 and T-2016, it met those criteria for proper notice of a public hearing on a local law under Municipal Home Rule Law § 20(5).

B. By publishing, posting and notifying the news media of the proper time and place of the September 6th meeting by August 31st, the Village Clerk satisfied the requirements of the Open Meetings Law

Mayor Rosenblum claims that the Village Clerk violated the Open Meetings Law because: (1) none of the written notices described the September 6th gathering as a "meeting"; (2) the initial written notices did not state the correct time for the meeting; and (3) notices of the correct time of the gathering were not published by the news media until a day before the

hearing. The text of the Opening Meetings Law and judicial decisions interpreting it refute these contentions.

The Open Meetings Law, found in article 7 of the Public Officers Law, establishes a series of procedures to promote public access to any "[m]eeting" of a public body, which it defines as "the official convening of a public body for the purpose of conducting public business." Public Officers Law §102(1). *See generally* Public Officers Law §§103-107. Because, with few exceptions, any official gathering of a public body to conduct public business constitutes a "meeting" under the statute, the application of the Open Meetings Law does not turn on the label ascribed to a particular gathering by the public body in question. *See Orange County Publications, Div. of Ottaway Newspapers, Inc. v. Council of the City of Newburgh*, 60 A.D.2d 409, 412-416 (2d Dept' 1978), *aff'd* 45 N.Y.2d 947 (1978); *Matter of Binghamton Press Co., Inc., v. Bd. of Educ. of the City School Dist. of the City of Binghamton*, 67 A.D.2d 797 (3d Dep't 1979). *See also* OML-AO-3812 (N.Y. Cmte. on Open Gov't June 2, 2004) ("By way of background, the definition of 'meeting' . . . has been broadly interpreted by the courts.").

The Open Meetings Law provides that "[p]ublic notice of the time and place of a meeting scheduled at least one week prior thereto shall be given or electronically transmitted to the news media and shall be conspicuously posted in one or more designated public locations at least seventy-two hours before such meeting." Public Officers Law §104; see *Matter of Bowen v. State Commission of Correction*, 104 A.D.2d 238, 240 (3d Dep't 1984); *Matter of Windsor Owners Corp. v. City Council*, 23 Misc.3d 490, 495 (Sup. Ct., N.Y. County, 2009); but see *Stein v. Rent Guidelines Bd.,* 127 A.D.2d 189, 192 (1st Dep't 1987). Since the statute authorizes the local legislature to electronically transmit or simply "give[ ]" the news media notice of the public hearing, Public Officers Law §104, the public body can satisfy the one-week notice requirement

simply by announcing the time, place and nature of the planned meeting at an earlier meeting at which the news media is in attendance. *See Town of Woodstock v. Goodson-Todman Enterprises, Ltd.,* 133 Misc. 2d 12, 21 (Sup. Ct., Ulster County, 1986). Obviously, the public body can meet the 72-hour posting requirement by placing the notice in at least one public location designated for that purpose. It did that as well.

Contrary to Mayor Rosenblum's claim, those notices of the public hearing were sufficient notice of a "meeting" under the Open Meetings Law because the Open Meetings Law does not distinguish between types of public meetings. Thus, regardless of what the notices called the meeting, they gave sufficient notice of an upcoming event that met all the criteria of such a "meeting," namely that the Board would "official[ly] conven[e]" to "conduct[ ] public business" in the form of a public discussion about the local laws. That is all that the Open Meetings Law requires. Public Officers Law §102(4); see generally *Orange County Publications, Div. of Ottaway Newspapers, Inc.,* 60 A.D.2d at 412-416.

C. Nothing in the Board of Trustees' Rules of Procedure prohibits voting on a proposed local law immediately after the public hearing on that law.

The rules of the Village of Mamaroneck Board of Trustees (Certified Transcript of Record, Exhibit A, state that "work sessions" of the Board will be held on the first and third Mondays of the month and "regular meetings" will be held on the second and fourth Mondays. "Special meetings" are "all those Board meetings other than regular meetings." Under the Board's rules, therefore, public hearings are classified as "special meetings." Special meetings require 24-hours' notice "by telephone, e-mail, in person, or in writing." The rules do not further specify the nature of the notice to be given of a special meeting, except to say that "[a]ll meetings shall be publicly noticed as required by law including notices forwarded to the official newspapers of the Village, and notices conspicuously posted on the Village website and in one or

more designated public locations." The certified transcript of the record and the affidavits of the Village Manager and the Deputy Village Clerk establish that these requirements were satisfied here.

There is nothing in the Board's rules which limits what the Board may do at either a regular or special meeting. Although the rules specify that nothing may be added to the agenda of a regular meeting after the agenda is finalized, they specifically permit a majority of the Board to do precisely that. The rules do not require any agenda for a special meeting. Since a public hearing is a special meeting, the rules do not prohibit the Board from taking any action whatsoever at that meeting. In any event, even if the Board's action were limited by an agenda, a majority of the Board can add to that agenda. Since a majority of the Board voted for the local laws that are at issue here, that same majority would clearly have voted to add action on the local laws to the agenda, if it had been necessary to do so. Even under the Board's rules, therefore, there is no basis for Mayor Rosenblum's argument that the Board could not act on the proposed local laws at the conclusion of the public hearing on those laws. There was, therefore, no violation of the Board's Rules of Procedure and the petition must, accordingly, be dismissed.

D. Even if there were a failure of notice, the failure was inadvertent and an inadvertent failure not a basis for setting aside acts of the Board of Trustees.

Even where a local legislature violates the notice requirements of the Open Meetings Law, the legislation enacted at the inadequately noticed meeting is not automatically invalid. Rather, the court may exercise its discretion to invalidate a local law or other legislative action based on a violation of the requirements of the Open Meetings Law only "upon good cause shown." Public Officers Law § 107(1). *See New York Univ. v. Whalen*, 46 N.Y.2d 734, 735 (1978). "An unintentional failure to fully comply with the notice provisions required by [the

Open Meetings Law] shall not alone be grounds for invalidating any action taken at a meeting of a public body." Public Officers Law § 107(1).

In accordance with these principles, "[c]ourts do not overturn decisions based on technical violations or negligent failure to comply precisely with the Open Meetings Law." *Matter of Windsor Owners Corp. v. City Council of City of N.Y.*, 23 Misc. 3d 490, 495 (Sup. Ct. N.Y. County, 2009). *See Matter of Roberts v Town Bd. of Carmel*, 207 A.D.2d 404, 405 (2d Dep't 1994). Specifically, courts have declined to invalidate a public body's actions where the public body did not take action or hold a vote outside the presence of the public; the public attended the meeting; members of the public offered comments at the meeting; the public body made reasonable efforts to notify the public of the meeting notwithstanding its technical noncompliance with the statute; and there is no evidence that the violation of the Open Meetings Law was intentional. *See Matter of Lancaster v Incorporated Vil. of Freeport*, 22 N.Y.3d 30, 40 (2013); *Matter of Center Sq. Assoc. Inc., v. City of Albany Bd. of Zoning Appeals*, 19 A.D.3d 968, 969-970 (3d Dep't 2005); *Matter of MCI Telecommunications Corp. v. Public Serv. Comm'n of the State of New York*, 231 A.D.2d 284, 291 (3d Dep't 1997); *Phillips v. County of Monroe*, 18 Misc. 3d 1127(A) (Sup. Ct., Monroe County, 2007); *Monroe-Livingston Sanitary Landfill, Inc. v. Bickford*, 107 A.D.2d 1062, 1062-1063 (4th Dep't 1985). On a petition seeking invalidation of a local law based on the local legislature's violation of the Open Meetings Law, "[i]t is the challenger's burden to show good cause warranting judicial relief." *Gernatt Asphalt Prods. v. Town of Sardinia*, 87 N.Y.2d 668, 686 (1996).

Here, the Board and the Village Clerk complied with both the letter and spirit of the Open Meetings Law by posting and publishing notice of the meeting on August 31st, a week prior to holding the September 6th. The Board had, in fact, announced at its meeting on August 15, 2016,

which was attended by members of the press and the public, that it would hold a meeting regarding Local Laws U-2016 and T-2016 at 7:30 p.m. on September 6, 2016. See Certified Transcript of Record, Exhibit D. Therefore, notice of the correct date, time and subject matter of the planned meeting was "given to the news media," Public Officers Law § 104, well over a week prior to the meeting. *See Goodson-Todman Enterprises, Ltd*, 133 Misc. 2d at 21. As for the 72-hour public posting requirement, the Village Clerk posted an accurate and conspicuous notice of the meeting on August 31, 2016 on the Village website and at the location where such notices are usually posted. See Affidavit of Deputy Village Clerk Sally Roberts; Certified Transcript of Record, Exhibits G, L.

Further, the Board and the Village Clerk made additional reasonable efforts to notify the public that the Board planned to hold a "meeting" within the meaning of the Open Meetings Law at 7:30 p.m. on September 6, 2016. On August 31, 2016, the Village Clerk's Office sent notice to the media that a public hearing would be held regarding Local Laws T-2016 and U-2016 on September 6, 2016. And, although the original August 30th notice of the hearing incorrectly identified the time of the meeting as 5:30 p.m. instead of 7:30 p.m., the Village Clerk's Office quickly corrected that minor inaccuracy a day later by distributing corrected notices to the news media and posting them on public websites (*see* Roberts Aff. at ¶¶ 4-9). Therefore, the Board and the Village Clerk worked diligently to ensure that the media and the public would learn of, and attend, the meeting well in advance.

In light of those efforts, even if there were any technical violation of the Open Meetings Law here, petitioner has failed to establish good cause to invalidate Local Laws U-2016 and T-2016. As explained by Deputy Clerk Roberts (*see* Roberts Aff. at ¶¶ 3-7), any technical failure to supply the media or the public with notice of the September 6th Board meeting within the

statutory timeframe was an entirely inadvertent oversight, and once the Board and the Clerk's Office discovered the inaccurate time listed on the original written notices, they swiftly corrected it to guarantee that the public would learn the details of the meeting prior to its occurrence. These corrective actions were successful, too, because members of the public and the media attended the 7:30 p.m. meeting, but the 5:30 p.m. work session did not draw any members of the public or the media. Members of the public were present for all votes and deliberations, and they availed themselves of the opportunity to speak in favor of or opposition to Local Laws U-2016 and T-2016.

Because the Board and the Village Clerk took reasonable steps to provide pre-meeting notice to the public, the public had unfettered access to the 7:30 p.m. meeting, the public fully participated in the Board's deliberative process and the Board did not intentionally deprive the public or the media of notice, the objectives of the Open Meetings Law were fulfilled, and there is no good cause to invalidate Local Laws U-2016 and T-2016. *See Matter of Lancaster v Incorporated Vil. of Freeport*, 22 N.Y.3d 30, 40 (2013); *Matter of Center Sq. Assoc. Inc.*, 19 A.D.3d at 969-970; *Roberts*, 207 A.D.2d at 405-406. *See also Matter of MCI Telecommunications Corp.*, 231 A.D.2d at 291 ("[E]ven if we were to find a violation of the Open Meetings Law, we would conclude – given the extensive public input into each state of the proceeding and the complete dearth of evidence that the [Public Service Commission] intentionally violated the Open Meetings Law – that petitioners failed in their burden of demonstrating good cause warranting the exercise of our discretionary power to nullify the Track 2 determination.").

E. Mayor Rosenblum's remaining claims are without merit.

Mayor Rosenblum argues that because the Village Clerk did not disseminate an agenda prior to the Board meeting in accordance with meeting procedures adopted by the Board, the

Board could not properly hold the meeting and pass Local Laws U-2016 and T-2016. As he sees it, the Board's enactment of the challenged legislation at the September 6th meeting in violation of the Board's meeting procedures rendered Local Laws U-2016 and T-2016 invalid. But, as noted above, a public hearing is a special meeting and no agenda us required for a special meeting. In any event, Mayor Rosenblum has failed to put forward any authority which even suggests that the Board's meeting procedures are anything other than guidelines for the conduct of meetings, with no binding legal force. And even if those guidelines had the force and effect of law, they do not purport to require the invalidation of a local law based on a violation of the guidelines. Hence, here, any breach of the Board's meeting procedures was immaterial to the validity of Local Laws U-2016 and T-2016. Nor did the lack of an agenda render those local laws void under any actually binding statute, as the Open Meetings Law does not require the distribution of a meeting agenda in advance of the meeting. *See Matter of Exmoor House, LLC, v. Village of Millbrook*, 82 A.D.3d 763, 764 (2d Dep't 2011); *LaLima v. County of Suffolk*, 45 A.D.3d 845, 847 (2d Dep't 2005).

Finally, Mayor Rosenblum asserts that the Board violated the provision of the Open Meetings Law that provides for the distribution of any laws to be discussed at a meeting of a public body because the Board did not give copies of Local Laws U-2016 and T-2016 to members of the public. The Open Meetings Law, however, simply states in this regard that a local law or agency records to be discussed at a meeting of a public body "shall be made available, *upon request therefor*, to the extent practicable as determined by the agency or the department, prior to or at the meeting during which the records [or law] will be discussed." Public Officers Law § 103(e) (emphasis added). Since petitioner has not alleged that members of the public requested copies of Local Laws U-2016 and T-2016 before or during the meeting, he

has failed to demonstrate any violation of the statute. In any event, the pre-meeting written notices identified those local laws and their subject matter, and the Board posted the text of the laws on the Village website prior to the meeting, making it readily available to anyone who cared to review it. Accordingly, this claim, like the rest of Mayor Rosenblum's claims, is without merit, and the petition should be dismissed.

CONCLUSION

For all of these reasons, Respondents respectfully submit that the petition should be dismissed in all respects.

Respectfully submitted,

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