

**Minutes of the Waukegan Park District
Committee of the Whole Meeting
August 25, 2015**

The Board of Commissioners of the Waukegan Park District met in a regular meeting on August 25, 2015 in the Rose Administrative Center, 2000 Belvidere Street, Waukegan, Illinois.

I. Call to Order

The meeting was called to order at 4:30 p.m. by President Foley who directed a call of the roll.

II. Roll Call

Present: Commissioners Kilkelly, Sarocka, Bridges, Jones, and President Foley. Absent: None. Also present was Executive Director Greg Petry, Board Attorney Charles Smith, Doug Holzrichter of Williams Architects, Ed and Paul Stuckey of Stuckey Construction and Jim Johnson of the AT Group.

III. Topic(s)

A. Hinkston Indoor Pool Update.

Doug Holzrichter presented an update on the Hinkston Pool project. Mr. Holzrichter reported that the construction drawings and specifications are nearly completed and the next step will be obtaining permits from the City and then going out for bids, with a goal of having a bid opening on September 17, 2015.

Paul Stuckey confirmed that they are looking to have a bid opening on September 17 and that they are seeking to get the first layer of asphalt down for the parking lot improvement before the asphalt plants close in late November.

The construction goal is to have the pool completed and ready to open by September 1, 2016.

Commissioner Bridges stressed that he wanted to be kept advised as to the efforts to involve local contractors in the bidding process. He also inquired whether Stuckey Construction will be bidding on certain of components of the construction.

Mr. Stuckey advised that they will seek the board's permission to self perform work and bid on certain portions of the project and that they are a Waukegan company and attempt to use local contractors.

Attorney Smith suggested that the board be provided with a list of contractors who will receive bid notices so that if the board is aware of other local contractors who may be interested in submitting a bid that they will have the opportunity to bid on the project.

President Foley asked if the north parking lot will be included as an alternative bid and she was advised that it will be an alternate bid on the project.

B. Policy on Commissioner Privileges for Activities/Programs and Facilities.

President Foley reviewed the past policies and practices and commissioner use of the facilities and noted the distinctions between peak and non-peak hours. She advised that she had only received comments concerning the policy from Commissioner Sarocka. She then opened the matter for discussion.

Commissioner Sarocka stated that he disagrees with calling this policy commissioner privileges and rather views the use of facilities as commissioners performing their duties, which is not a privilege, but rather a commissioner's responsibility.

Commissioner Sarocka went on to state that in his opinion, granting use of facilities, including unlimited golf is not a violation of any IRS policy and stated that there are hundreds of other park districts in the state that also allow their commissioners to use facilities without providing them with 1099 forms, or even having a policy concerning commissioner use.

Commissioner Kilkelly asked whether the policy meets the letter of the law.

President Foley stated her opinion that she did not view the commissioners as evaluators of park facilities and viewed the role of a commissioner as that of a volunteer and not someone who is trained to evaluate performance or standards of park district facilities.

Mr. Petry stated that the IRS does view the commissioners as employees and thus subject to reporting of compensation if they are compensated.

President Foley then asked Jim Glogovsky to explain the letter from Gary Polega, attorney with Chapman and Cutler, who graciously provided a letter of opinion on tax ramifications to the park district. Mr. Glogovsky explained that Chapman and Cutler is the park district's bond attorney and they agreed to review this issue and forego charges.

Mr. Glogovsky advised that at the heart of this matter is the issue of "de minimis use", "foregone revenue" and "discounts" which create a taxable situation and occur when commissioners use facilities without charge.

Mr. Glogovsky further explained that he had spoken with Ron Salski, Executive Director of the Lake Bluff Park District, concerning this issue who referred Mr. Glogovsky to Maggie Bosley with Lautenbach & Amen, certified public accountants, who provide accounting services to numerous governmental bodies. Ms. Bosley stated that she feels that the current park district policy is valid and in compliance with IRS regulations.

Mr. Glogovsky then stated that he was referred to Gary Polega and he reviewed Mr. Polega's letter of August 20, 2015 that addressed the issue of compliance with IRS guidelines. The letter confirms that the policy meets the guidelines established by the IRS.

Commissioner Sarocka pointed out again that many park districts have no policy on this issue.

Commissioner Kilkelly stated that she wanted to express her appreciation and that of the board to Mr. Polega and Chapman and Cutler for waiving their fees in giving their opinion.

Commissioner Jones stated that he also appreciates the additional information from Chapman and Cutler and was viewing this as an issue of displacement of revenue versus compensation.

Mr. Glogovsky stated that displacement of revenue creates a taxable event such that it requires advising the IRS of a payment by way of a 1099 form.

Commissioner Jones stated that he feels that to take this to its logical extreme you could make an argument that even non-peak times could be argued to be displaced revenue.

Commissioner Kilkelly stated that many municipal bodies in Illinois do not have recreation departments as opposed to elected park boards and that might explain why some communities do not have policies concerning this issue.

President Foley then asked Charles Smith to give his perspective as the board's attorney relative to this issue.

Mr. Smith explained that this has been a long standing issue that he has reviewed extensively on two prior occasions for the park district. In 2002 he reviewed the decision of Judge Lloyd VanDeusen from April 1975 in the case of *Smith, et al. v. Waukegan Park District*, 74 CH 110, in which Judge VanDeusen held that the Waukegan Park District could not allow free use of facilities to members of commissioners' families by virtue of the fact that they were related to a commissioner. Part of Judge VanDeusen's opinion stated that park districts are operated in such a manner that there cannot be preferential use granted to any one person or group. The opinion further ordered that the park district was to cease and desist the practice of

permitting free use of the district's golf courses or related facilities where any of the group, other than park commissioners during their term of office.

Mr. Smith pointed out that Judge VanDeusen's order is an order of a trial court and is 40 years old. It is accordingly not an appellate court opinion, which would make it a binding precedent.

Mr. Smith stated that the first statute that controls this issue is 1205/4-1 of the Park Code that states in part, "The members of such governing board shall act as such without compensation, and each member of the board shall be a legal voter and reside within such district." The analysis must therefore be whether the use of facilities is compensation, which would violate the Park Code and potentially forfeit a commissioner's position.

Mr. Smith reported that he had done two opinion letters relative to this issue, one in 2002 and a second in 2012. He then pointed out that there was a change in law in 2004 with the adoption of the Gift Ban Act. This becomes important because GolfVisions now operates the golf courses for the park district, and accordingly, if permitting free play for commissioners is viewed as providing a gratuity that has a monetary value, that both GolfVisions and the commissioner could be violating the Gift Ban Act. Mr. Smith stressed that there have been no reported cases of the appellate courts in Illinois interpreting the statute concerning commissioners serving without compensation, nor has there been any prosecution under the Gift Ban Act. However, he stressed that this does not mean that there could not be prosecutions and that the commissioners ultimately have to establish a policy concerning the use of facilities, and that it is only up to the staff and the board attorney to implement that policy.

Mr. Smith concluded his remarks by stating that this is a very difficult area to provide advice on since there is no case law and that if this were clearly in violation of state statute, he would so advise the board, but without legal precedent he cannot state that it does or does not violate either the Gift Ban Act or the prohibition against commissioner compensation. The commissioners must decide for themselves whether they wish to risk the potential violation of the prohibition against compensation and/or the Gift Ban Act by adopting a policy that permits unlimited use of golf facilities without paying for such use, as well as the potential public criticism of this practice.

President Foley stated that she was satisfied with Mr. Polega's letter and the potential IRS ramifications of unlimited use of the golf facilities and she stated that she has concerns about a policy permitting unlimited use potentially violating the Gift Ban Act.

Commissioner Sarocka stated that since this is a Committee of the Whole meeting, he wants this issue on the agenda at the September board meeting and he wants to adopt the policy that existed in 2010 permitting unlimited golf for commissioners.

Commissioner Kilkelly stated that she is in favor of putting anything a commissioner wants on the board meeting agenda, but she stated that she needs no more information and does not want any additional staff or attorney time expended on this issue.

Commissioner Bridges stated that he also favored putting this issue on the board meeting agenda for the September meeting and affirmed that he needs no more information in order to make a decision.

Commissioner Jones concurred to putting this matter on the September agenda and also stated that he is satisfied that he has received sufficient information to make a decision.

President Foley stated that she opposes a carte blanche use of golf course policy.

Commissioner Kilkelly stated that any commissioner should feel free to make a motion concerning this issue, but again, wants no more staff time expended on this.

IV. Closed Session

Motion by Commissioner Sarocka, seconded by Commissioner Jones, to adjourn into executive session to discuss pending litigation pursuant to 5 ILCS 120(c)(11) and potential purchase of property pursuant to 5 ILCS 120(C)(5). Roll call to the motion: Ayes: Kilkelly, Sarocka Bridges, Jones, Foley. Nays: None. Absent or not voting: None. Motion carried. Regular session adjourned at 5:36 p.m.

V. Adjournment.

Following executive session, **Motion by Commissioner Bridges, seconded by President Foley to adjourn. Motion carried unanimously.** Meeting adjourned at 6:06 p.m.

Attendance recorded per policy. All Commissioners were present.

Respectfully submitted,

Charles W. Smith
Board Secretary