

MINUTES OF SPECIAL BOARD MEETING
BOARD OF PARK COMMISSIONERS
WAUKEGAN PARK DISTRICT
Administration Center
2000 Belvidere Road
Waukegan, Illinois
June 27, 2017

I. CALL TO ORDER

President George Bridges called the meeting to order at 4:00 p.m.

II. ROLL CALL OF COMMISSIONERS

COMMISSIONERS PRESENT

President George Bridges
Vice President Marc Jones
Treasurer Patricia Foley
Janet Kilkelly
William Sarocka

COMMISSIONERS ABSENT

STAFF PRESENT:

Executive Director Greg Petry; Interim Director Jay Lerner
Superintendent of Parks Scott MacLean, Superintendent of Finance & Administration Jim Glogovsky,
Community Relations Manager Teddy Anderson, Executive Assistant Sally Sandine, Errick Beverly,
and Board Attorney George Bridges.

III. PUBLIC PORTION

None

IV. ACKNOWLEDGEMENTS & PRESENTATIONS

The following staff was introduced: Fitness Specialist Maria Horvath and Recreation Supervisor of Aquatic Fitness Andy Cook.

Director Petry introduced the re-accreditation team from the Commission for Accreditation of Park and Recreation Agencies (CAPRA) to the Board. He then had the team members, Stacy Beadle, Shari Ferguson and Gina Rivera address the Board.

Harry Came, President of the Waukegan Historical Society (Society), presented the Board with a gift to celebrate the 100th Year anniversary of the Park District. He explained the gift is a game called "Pieces of the Past" that would be played in all 50 parks within the District. He introduced Ty Rohrer, Cultural Arts Museum Supervisor, who stated how "Pieces of the Past" would work.

V. REVIEW / DISCUSS / DECIDE

A. Approve Comprehensive Architectural Services for Belvidere Park and Ganster Pool.

Doug Holzrichter presented his fee proposal for the Architectural Services of Belvidere Park. He then explained the scope of the services, timelines and projected costs for his services. He stated his cost of \$455,960 is 8% of the projected construction cost \$5,699,500. President Bridges asked Mr. Holzrichter why was the hourly rate schedule included in the fee proposal. Mr. Holzrichter stated that would not apply in this case unless the District requested some service outside of what is included in this agreement. Commissioner Sarocka asked if the District had been charged 8% of the construction costs for the Field House Aquatic Center. Interim Director Jay Lerner stated after researching this matter that he learned that 8% of the construction costs is typical for all park districts and that the District paid 8% for the Field House.

President Bridges stated with the projected amount this would cost the District, he didn't understand why the District was not seek bids for this project. Interim Director Jay Lerner stated because of their past relationships with Williams Architects and the fact the going rate is 8% he recommends accepting the agreement. Commissioner Foley stated because of the timelines she would not be in agreement with starting all over trying to find a suitable architectural firm. President Bridges questioned the need for a construction manager in light of Williams Architects' proposal.

Motion by Commissioner Kilkelly, seconded by Commissioner Jones, to approve the Comprehensive Architectural Services proposal from Williams Architects for Belvidere Park. There was no further discussion on this matter. On the roll call, the vote was as follows:

AYE: Kilkelly, Foley, Jones, Sarocka

NAY: Bridges

ABSTAIN: None

ABSENT: None

Motion carried.

B. Permission to Receive Bids/Quotes.

Mr. MacLean asked the Board for permission to receive bids and quotes for Clearview Park splash pads. Motion by Commissioner Sarocka, seconded by Commissioner Foley, to receive bids and quotes for Clearview Park splash pads. There was no discussion on this matter. On the roll call, the vote was as follows:

AYE: Kilkelly, Foley, Jones, Sarocka, Bridges

NAY: None

ABSTAIN: None

ABSENT: None

Motion carried.

C. Purchase of a John Deere 2500E E-Cut Hybrid.

Mr. MacLean asked the Board to approve the purchase of one (1) John Deere 2500E E-Cut Hybrid, through the National Joint Powers Alliance (NJPA) Contract #070313, from J.W. Turf, Inc., Elgin, IL,

in the amount of \$39,592.11.

Motion by Commissioner Sarocka, seconded by Commissioner Foley, to approve the purchase of one (1) John Deere 2500E E-Cut Hybrid, through NJPA, from J.W. Turf, Inc., in the amount of \$39,592.11. There was no discussion on this matter. On the roll call, the vote was as follows:

AYE: Kilkelly, Foley, Jones, Sarocka, Bridges

NAY: None

ABSTAIN: None

ABSENT: None

Motion carried.

D. Acceptance of Com-Ed Quote for pole relocation.

Mr. MacLean asked the Board to accept Com-Ed Quote for pole relocation to allow installation of the new driveway entrance to Clearview Park, in the amount of \$20,067.41.

Motion by Commissioner Sarocka, seconded by Commissioner Foley, to accept Com-Ed Quote for a pole relocation in the amount of \$20,067.41. There was no discussion on this matter. On the roll call, the vote was as follows:

AYE: Kilkelly, Foley, Jones, Sarocka, Bridges

NAY: None

ABSTAIN: None

ABSENT: None

Motion carried.

E. Approve the bid for Clearview Park playground equipment.

Mr. MacLean recommended the Board accept the low bid from NuToys, from LaGrange, Illinois, for Clearview Park playground equipment, in the amount of \$162,036.00.

Motion by Commissioner Kilkelly, seconded by Commissioner Foley, to accept the low bid from NuToys, for Clearview Park playground equipment, in the amount of \$162,036.00. There was no discussion on this matter. On the roll call, the vote was as follows:

AYE: Kilkelly, Foley, Jones, Sarocka, Bridges

NAY: None

ABSTAIN: None

ABSENT: None

Motion carried.

F. Open Meeting Act.

Commissioner Kilkelly stated she placed this matter on the agenda to make sure the Attorney

General's response to the Open Meetings Violation would be made a part of the record. The consensus of the Board was to incorporate the Attorney General's into the minutes.

G. Yeoman Creek End Use Update.

Attorney Bridges presented and discussed the most recent Estoppel and Consent agreement received from the School District. Director Petry provided a history of the litigation, and the District's remediation cost with respect to Edwards Field. The Board was unanimous that they were not willing to enter into a lease of Edwards Fields that could possibly draw the District back into the costly remediation litigation involving District's property at the Yeoman Creek landfill site.

VII. COMMISSIONERS QUESTIONS & COMMENTS

Commissioner Kilkelly congratulated Director Petry for his 30 years of service to the community. She also thanked him for the District's Gold Medal facilities and for all the employees of the District he had trained. Commissioner Foley congratulated Director Petry on his significant milestone in service to the District. Commissioner Jones thanked Director Petry for the successful growth of the District. He said the District's Gold Medal was a direct result of Director Petry's efforts. Commissioner Sarocka thanked Director Petry for his 30 years of service to the Waukegan Park District. President Bridges thanked Director Petry for his dedication to the District he stated he would save his further comments for the celebration planned this week.

VIII. MOTION TO MOVE TO CLOSED SESSION

Motion by Commissioner Foley, seconded by Commissioner Sarocka, to enter into closed session to discuss purchase or lease of Real Estate pursuant to 5 ILCS 120/2(c)(5). On the roll call, the vote was as follows:

AYE: Kilkelly, Foley, Jones, Sarocka, Bridges

NAY: None

ABSTAIN: None

ABSENT: None

Motion carried. Regular session was recessed at 5:30 p.m.

IX. ACTION ON ITEMS DISCUSSED IN CLOSED SESSION

Motion by Commissioner Bridges, seconded by Commissioner Sarocka, to reconvene open session. There was no discussion and the motion passed by unanimous voice vote. The regular session resumed at 5:52 p.m., with the following persons present: Commissioners Kilkelly, Foley, Jones, Sarocka, Bridges, Mr. Lerner, and Board Attorney Bridges.

No action was taken on matters discussed in closed session.

X. ADJOURNMENT

There being no further business, Commissioner Foley moved, seconded by Commissioner Jones to

adjourn the meeting at 5:52 p.m. The motion carried by unanimous voice vote.

Respectfully submitted,

George Bridges
Secretary



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

June 15, 2017

Via electronic mail
Mr. Greg Petry
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Via electronic mail
Mr. George Bridges
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RE: OMA Request for Review-2017 PAC 46752

Dear Mr. Petry and Mr. Bridges:

This determination is issued pursuant to section 3.5(e) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(e) (West 2015 Supp.)). For the reasons explained below, the Public Access Bureau concludes that the Board of Commissioners for the Waukegan Park District (Board) violated OMA by failing to provide sufficient advance notice in its January 10, 2017, meeting agenda that it would take final action to cancel the automatic renewal provision of the employment contract for the Park District's executive director.

On March 6, 2017, Mr. Greg Petry, the executive director for the Park District, filed a Request for Review alleging that the Board violated OMA at its January 10, 2017, meeting. He specifically alleged that the Board improperly took final action to cancel the automatic renewal provision of the executive director's contract because that action item was not listed on the meeting agenda with the specificity required by section 2.02(c) of OMA (5 ILCS 120/2.02(c) (West 2014)). On March 15, 2017, his office sent a copy of the Request for Review to the Board, and requested that it provide a detailed written response to its allegations together with copies of the agenda and minutes of the meeting as well as any existing verbatim recordings of that meeting.

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On March 20, 2017, the Board submitted a written response. The Board asserted that the following meeting agenda item furnished sufficient advance notice under section 2.02(c) and Illinois case law:

VIII. Closed Session
A. Discuss Executive Director's Contract¹

On March 24, 2017, this office forwarded a copy of the Board's response to Mr. Pcuy. He replied on March 27, 2017 and stated that the Board was "in violation of the OMA because they cannot go from closed session and take action on something that is not listed (publicly recited) on the 'regular agenda'."

DETERMINATION

Section 2.02(c) provides: "Any agenda required under this Section shall set forth the general subject matter of any resolution or ordinance that will be the subject of final action at the meeting." The Senate debate on House Bill No. 4687, which as Public Act 97-827, effective January 1, 2013, added section 2.02(c) of OMA, indicates that the General Assembly intended this provision to ensure that agendas provide sufficiently descriptive advance notice of the matters upon which a public body anticipates taking final action:

[T]here was no real requirement as to how specific [public bodies] needed to be to the public of what they were going to discuss that would be final action. And this just says that you have to have a general notice. If you're going to have and take final action, you to generally what's going to be discussed so that—that people who follow their units of local government know what they're going to acting upon (Emphasis added.) Remarks of Sen. Dillard, May 16, 2012, Senate Debate on House Bill No. 4687.1147.

The agenda item stated that the Board would "discuss" the executive director's contract in closed session. The Board argues that this description was sufficiently descriptive and in support of its argument cited in *In re Foxfield Subdivision v. Village of Campton Hills*, 396 Ill. App.3d 989 (1st Dist. 2009). Applying section 2.02(a) of OMA governing notice for

¹Wallington District. Meeting of the Board of Commissioners, A&M Council VII (January 10, 2017)

E-mail from Greg Poay (March 27, 2017)

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special meetings, the *Foxfield* court held that an Item referencing "Discussion and Consideration of potential annexation of property" was sufficient notice that the public body would be acting to annex a property at a special meeting. *Foxfield*, 396 Ill. App. 3d at 995-97. However, the *Foxfield* decision pre-dates the enactment of section 2.02(c) of OMA, which as reflected in the legislative debate, emphasizes that the public be sufficiently informed of what action will be taken by a public body.

Moreover, significantly, the Board placed the agenda item under its agenda section for a closed session, not as part of the agenda items for the open session. Section 2(e) of OMA (S ILCS 120.12(e) (West 2015 Supp.), as amended by Public Acts 99-642, effective July 28, 2016; 99-646, effective July 28, 2016) provides that "[n]o final action may be taken at a closed meeting." Since the Board could not take final action during the closed session, and it provided no additional information about anticipated final action during the open session, the agenda item for the closed session did not sufficiently notify the public that the Board intended to take final action on the executive director's contract during the open session. The reasonable inference would have been that the Board merely intended to discuss the contract in closed session, not that it would follow that discussion by taking final action in open session after exiting closed session. Accordingly, the Board violated section 2.02(c) of OMA.

Orlin (mil), this office would request that the Board re-vote on the matter at a subsequent meeting after proper advance notice of the final action to be taken. However, Mr. Petry informed this office that he has submitted notice of his resignation from the Park District as its executive director. Accordingly, no further remedial action is necessary, however, this office reminds the Board that all future agendas must comply with the requirements of OMA.

In *Ill. v. Pan. 5mion 1 OI(a) (ILCS 120.12(2)(c) (Wa200&))* the court held that "the public body must also include the agenda for the special meeting in the notice of the meeting. *Ill. v. Pan. 5mion 1 OI(a) (ILCS 120.12(2)(c) (Wa200&))* but the validity of any action taken by the public body shall not be affected by the fact that the agenda was not included in the notice of the meeting." *Ill. v. Pan. 5mion 1 OI(a) (ILCS 120.12(2)(c) (Wa200&))*

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The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. This letter serves to close this file. If you have any questions, please contact me at the Springfield address on the first page of this letter.

Very truly yours.



NEIL P. OLSON
Deputy Public Access Counselor
Assistant Attorney General, Public Access Bureau

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