OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

February 4, 2021

Via electronic mail
[redacted]

Via electronic mail
Mr. Adam B. Simon
Ancel Glink
175 East Hawthorn Parkway, Suite 145
Vernon Hills, Illinois 60061
asimon@ancelglink.com

RE: OMA Request for Review – 2020 PAC 64798

Dear [redacted] and Mr. Simon:

This determination letter is issued pursuant to section 3.5(e) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(e) (West 2018)). For the reasons that follow, the Public Access Bureau concludes that the Lindenhurst Park District (District) Board of Commissioners (Board) did not hold an improper meeting to discuss placing a matter on its agenda..

On September 12, 2020, [redacted] submitted a Request for Review alleging, in pertinent part, that the Board held an unscheduled Board meeting to discuss his request to place a particular item on the agenda at an upcoming meeting. More specifically, [redacted] states that on August 23, 2020, he sent the Board a motion and requested that it be placed on the agenda for the September 8, 2020, meeting. Further, he received a response on September 6, 2020, stating that the Board had received and reviewed his request and decided not to place the request on the agenda. [redacted] stated that he was not aware of any Board meeting scheduled in the time between the submission of his motion and his receipt of the e-mail at which the Board could have discussed his request, therefore, he alleged, the Board must have held an improper meeting.

On September 25, 2020, this office forwarded a copy of [redacted] Request for Review to the Board and asked it to provide a written response to [redacted] allegation. The Board responded on September 30, 2020. [redacted] replied on October 5, 2020.

DETERMINATION

As an initial matter, this office notes that [redacted] Request for Review also alleges that the Board is refusing to respond or accept his request for information through questions or a motion, and denying his requests to address the Board. In e-mail correspondence with an Assistant Attorney General in the Public Access Bureau on September 18, 2020, [redacted] clarified that he was not alleging that the Board was denying him the opportunity to participate during its period for public comments. The Public Access Counselor's authority to resolve disputes is limited to alleged violations of OMA and the Freedom of Information Act (5 ILCS 140/1 *et seq.* (West 2018)). *See* 15 ILCS 205/7(c)(3) (West 2018). No provision of OMA requires a public body to place an item on its agenda when suggested by a member of the public, or grant a member of the public the opportunity to be added to an agenda. Accordingly, the concerns raised in [redacted] Request for Review and reply about the Board's refusal to discuss his suggested topic and the underlying disagreement between [redacted] and the Board about that topic do not allege a violation of OMA.

Section 2 of OMA (5 ILCS 120/2 (West 2018), as amended by Public Acts 101-031, effective June 28, 2019; 101-459, effective August 23, 2019) provides that "all meetings of public bodies shall be open to the public unless excepted in subsection (c) and closed in accordance with Section 2a." Section 1.02 (5 ILCS 120/1.02 (West 2018)) defines a meeting as:

> [A]ny gathering, whether in person or by video or audio conference, telephone call, electronic means (such as, without limitation, electronic mail, electronic chat, and instant messaging), or other means of contemporaneous interactive communication, of a majority of a quorum of the members of a public body held for the purpose of discussing public business or, for a 5-member public body, a quorum of the members of a public body held for the purpose of discussing public business.

The Board consists of five members; thus if three or more members of the Board engage in a contemporaneous, interactive, deliberative discussion of public business, then the

gathering would constitute a "meeting" subject to the procedural safeguards and requirements of OMA.

In its response to the Request for Review, the Board explained that the District's Executive Director (who is not a member of the Board) conferred separately with four of the five Board members concerning [redacted] request to be placed on the agenda for the September 8, 2020, meeting. The Board further explained that during those separate, individual discussions, the Executive Director gathered the consensus that the Board would not add [redacted] to the agenda, and he thereafter communicated that consensus to [redacted]. Notably, no consensus of the Board is required for the Executive Director to place items on an agenda. Rather the Executive Director sought out opinions of various Board members with respect to [redacted] request. The Board argued that these four separate, individual discussions between the Executive Director and Board members did not constitute a meeting of the Board because at no time did three or more members of the Board ever gather, in person or electronically, for the purpose of discussing [redacted] request. In his reply, [redacted] explained the importance of the item he requested to add to the Board's agenda.

Based on the available information, there is no evidence that three or more members of the five-member Board engaged in contemporaneous interactive communications concerning a matter of District or Board business. Separate conversations between the District's Executive Director and individual Board members do not constitute a "meeting" of those four Board members under the definition of that term in section 1.02 of OMA. Accordingly, this office concludes that the Board did not hold an improper meeting prior to September 6, 2020, to discuss [redacted] request.

This office further notes that section 2(e) of OMA (5 ILCS 120/2(e) (West 2018)) provides that "[n]o final action may be taken at a closed meeting. Final action shall be preceded by a public recital of the nature of the matter being considered and other information that will inform the public of the business being conducted." This office has determined that a public body violated OMA when it reached a decision on a matter of public business through individual communications with public body members and took action to implement that decision. *See* Ill. Att'y Gen. PAC Req. Rev. Ltr. 58555, issued August 20, 2019 (finding that a Board's decision to suspend camping in a park, reached after a series of two-member conversations among Board members outside of an open meeting, violated OMA). Here the conversations were not a chain of discussions between Board members, which can violate the spirit, if not the letter, of OMA, but involved discussions between a park district employee and Board members. In addition. a decision to place or not place items on the agenda is not final action—it is a procedural step needed to identify the substantive issues to be discussed or acted upon at a meeting. Section 2(e) of OMA governs only votes on substantive issues. *See* Ill. Att'y Gen. PAC Req. Rev. Ltr. 44862,

issued December 12, 2016. Therefore, the Board did not violate section 2(e) of OMA by declining to place [redacted] item on the agenda for discussion or action.

The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. If you have any questions, you may contact me at (312) 814-6437, lbartelt@atg.state.il.us, or the Chicago address listed on the first page of this letter. This file is closed.

Very truly yours,

[redacted]

LEAH BARTELT
Deputy Public Access Counselor
Public Access Bureau

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