OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

October 28, 2022

Via electronic mail
[redacted]

The Honorable Dan Baker
President, Board of Trustees
Village of West Salem
106 East South Street
P.O. Box 456
West Salem, Illinois 62476

RE: OMA Request for Review – 2022 PAC 73114

Dear [redacted] and Mr. Baker:

This determination letter is issued pursuant to section 3.5(e) of the Open Meetings Act (OMA) (5 ILCS 120/3.5 (West 2020)). For the reasons that follow, the Public Access Bureau is unable to conclude that the Village of West Salem Board of Trustees (Board) violated OMA when it removed [redacted] from its August 15, 2022, special meeting. The Board, however, failed to provide adequate advance notice of a final action taken at the meeting.

BACKGROUND

On August 19, 2022, [redacted] submitted a Request for Review alleging that at its August 15, 2022, special meeting, the Board improperly removed him from the meeting without a valid basis. [redacted] made the following arguments regarding his removal: (1) despite speaking outside the allotted time for public comment, his comments were brief and did not disrupt public business; (2) Village President Baker violated Board rules regarding public comment by removing him from the meeting; (3) others at the meeting spoke outside the time allotted for public comment and were not removed; and (4) public comment

outside of the time period allotted for public comment has been allowed at virtually every previous meeting of the Board.

[redacted] also alleged that the Board failed to sufficiently identify on its meeting agenda the general subject matter of an ordinance on which the Board took final action at that same meeting. Specifically, [redacted] cited agenda item B, which states: "Discussion and/or Determination of Ordinance 2022-08; an ordinance amending Chapter 30 Article III – Fire Department."[1] [redacted] alleged:

> Item B on the agenda for the Aug. 15 meeting does not provide any information regarding the general subject matter of the ordinance that was to be amended during the meeting. The agenda only listed the title of the ordinance, giving the public no advanced knowledge of what action the board was considering.[2]

On August 26, 2022, the Public Access Bureau forwarded a copy of the Request for Review to the Board's President, Dan Baker, and asked him to provide copies of the Board's August 15, 2022, meeting agenda, minutes, audio or video recordings, and the ordinance that [redacted] referenced for the agenda item in question. This office also asked the Board to respond in writing to [redacted] OMA allegations, addressing [redacted] removal from the meeting and the claim that the agenda item did not provide sufficient advance notice of the general subject matter of that final action. The Public Access Bureau received the requested materials from the Board's attorney on September 12, 2022. On September 13, 2022, the Public Access Bureau forwarded a copy of the Board's answer to [redacted]. [redacted] did not provide a written reply.

DETERMINATION

"The Open Meetings Act provides that public agencies exist to aid in the conduct of the people's business, and that the intent of the Act is to assure that agency actions be taken openly and that their deliberations be conducted openly." *Gosnell v. Hogan*, 179 Ill. App. 3d 161, 171 (5th Dist. 1989).

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[1]Village of West Salem Board of Trustees, Agenda Item B, Discussion and/or Determination of Ordinance 2022-08; an ordinance amending Chapter 30 Article III – Fire Department (August 15, 2022).

[2]E-mail from [redacted] to Public Access [Bureau, Office of the Attorney General] (August 19, 2022).

Meeting Openness

Section 1 of OMA (5 ILCS 120/1 *et seq.* (West 2020)) provides that "it is the intent of this Act to ensure that the actions of public bodies be taken openly and that their deliberations be conducted openly." Section 1 of OMA further provides that members of the public have "the right to attend all meetings at which any business of a public body is discussed or acted upon in any way." [redacted] framed his allegation as a public comment violation under section 2.06(g) of OMA (5 ILCS 120/2.06(g) (West 2020)), which provides that "[a]ny person shall be permitted an opportunity to address public officials under the rules established and recorded by the public body." [redacted] and the Board do not dispute, however, that the comments giving rise to [redacted] removal occurred outside the time period allotted for public comment. Thus, the matter at hand is not public comment, and the Board's public comment rules do not govern this matter. Rather, the relevant question is whether the Board improperly removed [redacted] for disrupting the business portion of the meeting. This office therefore construed [redacted] Request for Review as alleging a violation of section 2.01 of OMA (5 ILCS 120/2.01 (West 2020)), which provides that "[a]ll meetings required by this Act to be public shall be held at specified times and places which are convenient and ***open to the public***." (Emphasis added.) To uphold the ability to have an open meeting, the head of a public body may take measures to preserve decorum and ensure that a meeting is conducted in an orderly and efficient manner. *See, for example,* Ill. Att'y Gen. PAC Req. Rev. Ltr. 53888, issued April 30, 2020, at 4 ("[T]he head of a public body has the authority and responsibility to run a civil and businesslike meeting, including the inherent authority to put a stop to conduct that interferes with the orderly conduct of a meeting.").

In its response to this office, the Board explained that during the meeting's public comment period, [redacted] inaccurately stated of the ordinance: "You're really not supposed bring it up and pass it that same meeting. You're supposed to show it to us and then approve it or disapprove it next meeting after people have a chance to read it."[3] The Board contended that these comments caused confusion with Trustee Jackson as he asked counsel for clarification later in the meeting during the vote on the agenda item in question.[4] The Board asserted that when it was considering the other item on the agenda—police policies—the following occurred:

[3]Letter from Darrin K. Rice, Fyie & Rice Law Office, LLC, to Matthew G. Goodman, Assistant Attorney General, Public Access Bureau, [Office of the Attorney General] (September 12, 2022), at 2.

[4]Letter from Darrin K. Rice, Fyie & Rice Law Office, LLC, to Matthew G. Goodman, Assistant Attorney General, Public Access Bureau, [Office of the Attorney General] (September 12, 2022), at 2.

> Trustee Bradham found some typographical errors that rendered the entire policy (in his opinion) "wrong". And Trustee Bradham made the statement that the Board can go ahead and vote on something that was wrong. [redacted] blurted out, "What's wrong?" and was warned not to speak out while the Board was conducting the meeting and was in the middle of a vote (there had been a Motion and second and the Mayor called for a roll-call vote when Trustee Bradham asked for further discussion; this is when [redacted] made his interruption).[5]

The Board additionally asserted that later in the meeting:

> When the Board was considering the Fire Department Ordinance, and while they were in the middle of voting on this second matter (there had been a Motion and a second and the Mayor called for a roll-call vote), [redacted] blurted out again:
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> "You can't vote on it tonight".
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> To which the Mayor stated, "No [redacted]" and [redacted] continued talking. At this point, the Mayor asked a police officer to have [redacted] removed.[6]

The Board argued that "[a]t issue is not a person that was muttering something to the person sitting next to him. The Board was in the process of trying to vote on the Fire Department Ordinance. And [redacted] was trying to interfere with the vote."[7]

In his Request for Review, [redacted] argued that his comments while the Board was conducting public business were brief and not disruptive. Referencing a Board rule concerning public comment, [redacted] claimed that:

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[5]Letter from Darrin K. Rice, Fyie & Rice Law Office, LLC, to Matthew G. Goodman, Assistant Attorney General, Public Access Bureau, Office of the Attorney General (September 12, 2022), at 3.

[6]Letter from Darrin K. Rice, Fyie & Rice Law Office, LLC, to Matthew G. Goodman, Assistant Attorney General, Public Access Bureau, Office of the Attorney General (September 12, 2022), at 3.

[7]Letter from Darrin K. Rice, Fyie & Rice Law Office, LLC, to Matthew G. Goodman, Assistant Attorney General, Public Access Bureau, Office of the Attorney General (September 12, 2022), at 3.

> Village President Baker did use his gavel and say my name as I was speaking: but he also ordered a village police officer to remove me from the meeting almost immediately after doing so. There was no clear explanation as to why he was using his gavel and addressing me, so I would argue that this wouldn't even qualify as a "call to order," although admittedly that language isn't properly defined in the rules set by the board. Regardless, Village President Baker didn't allow for enough time to see if "such conduct" would continue before ordering my expulsion.
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> Also regarding Rule 3, the penalty referenced for its violation dictates that I would be "barred from further audience" with the board for the remaining duration of the meeting. I interpret this to mean that I would no longer be allowed to address the board after violating the rule multiple times. Neither Rule 3 nor any other section of the board's public comments rules specifies the terms dictating the removal of a member of the public from a public meeting.[8]

[redacted] also argued that multiple people can be heard on the recording addressing the Board outside of the allotted time for public and that public comment, outside of the allotted time for public comment, has been allowed at virtually every previous meeting of the Board.

This office reviewed the meeting minutes and the audio recording of the August 15, 2022, meeting and is unable to conclude that the Board violated OMA when it removed [redacted] from the meeting. [redacted] was afforded an opportunity to address the Board during the public comment period, then later spoke outside of the allotted time for public comment, at which time the Board's public comment rules no longer applied. Although [redacted] comments were not necessarily abusive, harassing, defamatory, nor directed at any Board member specifically, they occurred during a period of time when the Board was conducting business. It is clear from the audio that such comments did cause some confusion with a Trustee. Regardless of the duration of [redacted] comments, they disrupted the business of the Board and the head of the public body may take measures to preserve the decorum and ensure that the business of the Board can be conducted. Here, Village President Baker did gavel and request that [redacted] be removed after he was warned two times not to speak outside of the public comment period. Whether other attendees spoke outside of the public comment period and were not removed for such conduct is outside the scope of this

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[8]E-mail from [redacted] to Public Access [Bureau, Office of the Attorney General] (August 19, 2022).

office's review. Similarly, whether public comment occurred outside of the time period allotted for public comment at prior Board meetings is outside the scope of this office's review. This office's review is limited to the alleged OMA violation at the August 15, 2022, Board meeting, and this office finds no violation of section 2.01 of OMA under these circumstances.

Nonetheless, the Office of the Public Access Counselor is charged with providing advice and education to both public officials and the public. *See* 15 ILCS 205/7(a), (b), (c) (West 2020). To that end, the Board should be mindful to enforce its rules consistently for all meeting attendees. To do otherwise may cause confusion and increase the likelihood of disruptive conduct during Board meetings.

Notice of Final Action

Section 2.02(c) of OMA (5 ILCS 120/2.02(c) (West 2020)) provides that "[a]ny 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." OMA does not define the term "general subject matter." However, 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 just no real requirement as to how specific they 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, as 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 be acting upon. Remarks of Sen. Dillard, May 16, 2012, Senate Debate on House Bill No. 4687, at 47.

The Attorney General has issued a binding opinion concluding that an agenda item that merely identifies an ordinance and city code provision by their numbers is insufficient to provide notice of final action under section 2.02(c). Ill. Att'y Gen. Pub. Acc. Op. No. 19-012, issued November 13, 2019, at 6 (finding that for an ordinance raising permit application fees from $100 to $500, "at a minimum, the agenda should have indicated that the Council would consider an ordinance amending the City Code and concerning permit application fees."). Similarly, in Binding Opinion 22-008 (Ill. Att'y Gen. Pub. Acc. Op. No. 22-008, issued June 30, 2022, at 6), this office concluded that the agenda item "Discussion and vote on recommendation to the County Board

regarding farming options for the County Farm" failed to set forth the general subject matter of its votes concerning attaining crop insurance and borrowing money for crop expenses.

Again, the agenda item in question stated: "Discussion and/or Determination of Ordinance 2022-08; an ordinance amending Chapter 30 Article III – Fire Department."[9] The minutes from the Board's August 15, 2022, meeting indicate that:

> [I]t was moved by Shonda Summerfield and seconded by April Campbell-Rickey to accept the revised fire ordinances with the addition of 30-3-2 under meetings that shall elect fire chief is not to be stricken out. Motion passed by Roll Call Vote: Ray-yea, Mewes-nay, Jackson-nay, Bradham-nay, Rickey-yea, and Summerfield-yea. Mayor Baker broke the tie and voted to accept the revised fire ordinances.[10]

The Board's response to this office asserted that the agenda item concerning the Fire Department ordinance provided sufficient advance notice. The Board likened the agenda item at issue to the agenda item in *Board of Education of Springfield School District No. 186 v. Attorney General of Illinois*, 2017 IL 120343, 77 N.E.3d 625 (2017). The Board asserted:

> At its essence, the Village set forth: Discussion/determination of an ordinance regarding the Fire Department. In the Board of Education of Springfield District No. 186 [case], "general subject matter" is met where it lists "approval of a resolution regarding a separation agreement." The Agenda item and final action of the Village (on August 15, 2022) is more similar to Board of Education of Springfield School District No. 186 than in PAC 22-008.[11]

The Board's comparison to the action the Board took in *Board of Education of Springfield School District No. 186* is misplaced. There, the agenda item was: "Approval of a Resolution regarding the Separation Agreement and Release between Superintendent Dr. Walter Milton, Jr., and the Board of Education." *Board of Education of Springfield School District No.*

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[9]Village of West Salem Board of Trustees, Agenda Item B, Discussion and/or Determination of Ordinance 2022-08; an ordinance amending Chapter 30 Article III – Fire Department (August 15, 2022).

[10]Village of West Salem Board of Trustees, Meeting, August 15, 2022, Minutes 4.

[11]Letter from Darrin K. Rice, Fyie & Rice Law Office, LLC, to Matthew G. Goodman, Assistant Attorney General, Public Access Bureau, [Office of the Attorney General] (September 12, 2022), at 6.

186, 2017 IL 120343, ¶8, 77 N.E.3d at 628. This item specifically identified that the board was to take action regarding a specific agreement between the school board and a specific individual. This office has reviewed Ordinance No. 2022-08 and the amendments adopted pertaining to it at the August 15, 2022, meeting. Here, the agenda item did not provide sufficient advance notice and identify the general subject matter of the action the Board took at its August 15, 2022, meeting. Although the agenda identified a Chapter 30 and Article III in conjunction with the words "Fire Department," it was too vague and imprecise to provide any meaningful notice to the public of what the Board was amending. A review of the audio and the amendments themselves reveals that the Board substantively altered, among other things, the appointment process of the Fire Chief. Contrary to the Board's assertion, the contested agenda item is more similar to the insufficient agenda items in the binding opinions discussed above than the sufficient agenda item in *Board of Education of Springfield School District No. 186* because the public had no information other than that action would take the form an "amendment" and that it would concern the Fire Department.

Although section 2.02(c) of OMA does not require the Board to specifically identify each part of the ordinance to be amended, the fact that the Board's action involved many sections does not relieve the Board of its obligation to describe on its agenda the general subject matter of the action it intended to take. A member of the public reading the agenda in advance of the Board's August 15, 2022, meeting would not have had sufficient notice that the Board planned to vote on comprehensive amendments to the Fire Department ordinance, including the process by which the Fire Chief is appointed.

Accordingly, this office concludes that the Board improperly took final action during its August 15, 2022, meeting without including the general subject matter of that action in the Board's meeting agenda. We request that the Board remedy its violation of section 2.02(c) by re-voting on the amendments to the extent possible after providing sufficient advance notice of the general subject matter of the amendments in a meeting agenda.

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 matter. If you have questions, please contact me at (773) 590-6840 or matthew.goodman@ilag.gov if you have questions or would like to discuss this matter. Thank you.

Very truly yours,

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MATT GOODMAN
Assistant Attorney General
Public Access Bureau

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cc: *Via electronic mail*
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