



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

March 15, 2024

Via electronic mail

Mr. Jack Bentley
Executive Director
Citizen Advocacy Center
jbentley@citizenadvocacycenter.org

Via electronic mail

Mr. Thomas J. Halleran
Storino, Ramello & Durkin
9501 West Devon Avenue, Suite 800
Rosemont, Illinois 60018
thomas@srd-law.com

RE: OMA Request for Review – 2023 PAC 79472

Dear Mr. Bentley and Mr. Halleran:

This determination is issued pursuant to section 3.5(e) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(e) (West 2022)). For the reasons explained below, the Public Access Bureau concludes that the Village of Burr Ridge Board of Trustees (Board) did not violate OMA in connection with the public comment period at its October 23, 2023, meeting.

BACKGROUND

In a Request for Review received by this office on December 21, 2023, Mr. Jack Bentley of the Citizen Advocacy Center alleged that during the public comment period at its October 23, 2023, meeting, the Board violated section 2.06(g) of OMA.¹ Specifically, Mr. Bentley alleged that the Board violated OMA by (1) instructing members of the public to sign a pad of paper to represent their opposition to a proposed gas station rather than voicing their opposition; (2) instructing individuals to provide their home addresses on that pad; (3)

¹5 ILCS 120/2.06(g) (West 2022).

prioritizing elected officials over other individuals wishing to address the Board; and (4) ending the period for public comment before all who wished to speak were able to address the Board.²

On January 10, 2024, this office asked the Board or its representative to provide a written response to this office in which it addressed Mr. Bentley's allegations. On January 18, 2024, the Board responded. On January 19, 2024, this office forwarded the Board's answer to Mr. Bentley; he replied on January 26, 2024.

DETERMINATION

It is the "public policy of this State that its citizens shall be given advance notice of and the right to attend all meetings at which any business of a public body is discussed or acted upon in any way." 5 ILCS 120/1 (West 2022). "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 (1989).

Section 2.06(g) of OMA provides that "[a]ny person shall be permitted an opportunity to address public officials under the rules established and recorded by the public body." The Attorney General has concluded that section 2.06(g) of OMA "requires that all public bodies subject to the Act provide an opportunity for members of the public to address public officials at open meetings." See Ill. Att'y Gen. Pub. Acc. Op. No. 14-012, issued September 30, 2014, at 5. A public body violates section 2.06(g) of OMA when it: (1) prohibits a member of the public from addressing its members in a manner inconsistent with its established and recorded rules, or (2) prohibits a member of the public from providing public comment pursuant to its established and recorded rules, but those rules unreasonably restrict that person's right to address public officials. Ill. Att'y Gen. Pub. Acc. Op. No. 14-009, issued September 4, 2014, at 5-7.

This office has reviewed the recording of the October 23, 2023, meeting. Relevant to Mr. Bentley's Request for Review, the Board considered whether to modify the objection it previously filed with the DuPage County Board concerning the construction of a QuikTrip gas station and store. As the mayor was about to begin the period for public comment, a Board member interrupted him and stated, "I'm sure all these residents would love to talk." To which the mayor stated, "yeah, we're not letting [inaudible]." ³ The Board member made

²Mr. Bentley also alleged that the Board's actions violated the First Amendment of the United States Constitution. The Public Access Counselor's authority to resolve disputes is limited to alleged violations of OMA and the Freedom of Information Act, however, and therefore, this office will not address those allegations. See 15 ILCS 205/7(c)(3) (West 2022).

³Village of Burr Ridge, Board of Trustees Meeting (October 23, 2023), https://www.youtube.com/watch?v=ROd2ZqnB_Is, at approximately 1:16:45.

comments implying that many of the comments would be repetitive, but he did not finish his statement. The mayor then asked how many residents of Burr Ridge wished to provide public comment. Numerous individuals in the audience raised their hands. After some Board member comments, the mayor began inviting members of the audience to address the Board. When asked about time limits for each speaker, the mayor said "we're not going to give them too much time" and asked the audience how many people wanted to speak.⁴ Seeing a large number, the mayor sent around a pad of paper and explained that people could provide their names and addresses to be listed in the record as against the gas station proposal. He then said he would let some of the audience members speak. He asked the audience to be considerate of the Board's time and to offer non-repetitive comments. Specifically, he stated, "if there are some things we haven't considered—I brought up a few things—if I failed to bring something up that you want to bring up, of course then the Board wants to hear that, but we don't want to hear about the left turn lane, pork chops, overnight parking, okay? Something new would be refreshing."⁵

Seven members of the public addressed the Board in opposition to the gas station, without interruption, for a total of approximately 16 minutes. The mayor then asked if anyone present was in favor of the gas station. Seeing no one, the mayor indicated that he would let three more people speak. Three more individuals addressed the Board to express their opposition to the gas station without interruption, for a total of approximately seven minutes. After permitting the gas station representatives to answer questions and allowing Board members to speak, the mayor made a final request for public comment. In doing so, he stated, "procedure...does require me to say 'is there any public comment,' but I've really heard all the public comment. So, I'm not going to say no, but I'm asking you that you should read the room. And so, does anybody want to make a public comment?"⁶ He then permits three more individuals to address the Board; all three spoke uninterrupted about their opposition to the gas station, for a total of approximately four minutes. The Board then took a vote on the matter.

In his Request for Review, Mr. Bentley characterized the list of names in opposition to the gas station as an alternative to addressing the Board. Upon reviewing the recording of the public comment period, however, no one was told that if they signed the list, they could not also address the Board. To the contrary, as the Board pointed out in its response to this office, twelve individuals who signed the list also addressed the Board. The list was not a mandatory substitute for addressing the Board or a tool used by the Board to prohibit public

⁴Village of Burr Ridge, Board of Trustees Meeting (October 23, 2023), https://www.youtube.com/watch?v=ROd2ZqnB_Is, at approximately 1:24:35.

⁵Village of Burr Ridge, Board of Trustees Meeting (October 23, 2023), https://www.youtube.com/watch?v=ROd2ZqnB_Is, at approximately 1:25:50.

⁶Village of Burr Ridge, Board of Trustees Meeting (October 23, 2023), https://www.youtube.com/watch?v=ROd2ZqnB_Is, at approximately 2:13:32.

comment, rather it was a means of having individuals' opposition to the gas station placed in the record. Accordingly, the Board's use of the list did not violate section 2.06(g) of OMA.⁷

Mr. Bentley also alleged that the Board impermissibly prioritized elected officials over members of the public and ended public comment before all individuals who wished to speak had addressed the Board. Although this office observed that two elected officials addressed the Board, there is no indication on the recording that those individuals were selected to the exclusion of members of the public. Further, the Board did not interfere with or prohibit any individual from addressing it during the meeting. The Board invited public comment on the gas station topic three times, including extending a final opportunity that three members of the public used to address the Board. There is no indication that anyone was attempting to speak at the conclusion of the final portion of the public comment period but was not permitted to do so. Therefore, this office is unable to conclude that the Board violated section 2.06(g) when it ended the period for public comment.

In his reply, Mr. Bentley stated that "[t]he purpose of the Request for Review * * * was to report a perceived 'chilling effect' on the public comment at the October 23, 2023 meeting of the Board[.]"⁸ "The Citizen Advocacy Center is simply asserting that the way the meeting and public comment was conducted actively *discouraged* rather than *encouraged* public comment."⁹ He also asserted that the Board violated the spirit of OMA in that "[l]imiting public comment simply because the governing body believes the vote will align with a majority of the public commenter's viewpoints is not a justification to limit or discourage public comment. Taking names and addresses has the effect of creating a premature 'straw poll' that the Village Board used as an excuse to minimize the importance of the public comment."¹⁰

It is apparent that the mayor's comments throughout the period for public comment were intended to discourage repetitive commentary and encourage individuals to share

⁷It follows that the Board did not violate OMA by asking individuals to include their addresses on the list. Although the Attorney General has previously concluded that an established and recorded rule requiring speakers to provide their home addresses prior to addressing it would impermissibly exceed the scope of the rulemaking contemplated by section 2.06(g), the Board never asked individuals to provide their addresses before addressing it. Ill. Att'y Gen. Pub. Acc. Op. No. 14-009, issued September 4, 2014, at 7 ("Requiring a member of the public to provide his or her complete home address prior to speaking may have a chilling effect on individuals who wish to speak at public meetings.").

⁸Letter from Jack Bentley, Executive Director & Community Lawyer, Citizen Advocacy Center, to Laura S. Harter, Deputy Bureau Chief, Public Access Bureau (January 26, 2024), at [1].

⁹Letter from Jack Bentley, Executive Director & Community Lawyer, Citizen Advocacy Center, to Laura S. Harter, Deputy Bureau Chief, Public Access Bureau (January 26, 2024), at 3. (Emphasis in original.)

¹⁰Letter from Jack Bentley, Executive Director & Community Lawyer, Citizen Advocacy Center, to Laura S. Harter, Deputy Bureau Chief, Public Access Bureau (January 26, 2024), at 3.

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new viewpoints. Despite the mayor's apparent exasperation with repetitive comments, he still signaled to the audience that the Board would listen to whatever comments individuals wished to make on the subject by permitting thirteen individuals to deliver largely repetitive comments. Notably, his tone remained civil and he never interrupted or reprimanded any members of the public. Under these circumstances, this office is unable to conclude that the Board's actions in facilitating the public comment period of the October 23, 2023, violated section 2.06(g) of OMA.

This office notes, however, that the statutory right to provide public comment is not conditioned on the novelty of a speaker's comments. In the absence of an established and recorded rule that restricts the total amount of public comment time or number of speakers, the Board should be mindful that OMA generally does not permit a public body to unilaterally limit comments that it perceives to be redundant. This office also recommends that the Board refrain from making comments that potentially could discourage members of the public from participating in public comment.

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, please contact me at laura.harter@ilag.gov. This letter serves to close this file.

Very truly yours,

A solid black rectangular box used to redact the signature of Laura S. Harter.

LAURA S. HARTER
Deputy Bureau Chief
Public Access Bureau

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