



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

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October 19, 2023

Via electronic mail

Ms. Michelle Mourousias
MourousiasM@netscape.net

Via electronic mail

The Honorable Eileen Phipps
President
Village of Wayne
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RE: OMA Request for Review – 2023 PAC 76775

Dear Ms. Mourousias and Ms. Phipps:

This determination is issued pursuant to section 3.5(e) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(e) (West 2022)).

BACKGROUND

On May 11, 2023, the Public Access Bureau received a Request for Review from Ms. Michelle Mourousias alleging that the Village of Wayne's Historic Sites Commission (Commission) violated OMA by not timely approving the minutes of its September 12, 2022, special meeting. Ms. Mourousias further alleged that those meeting minutes did not document two votes that were taken on a specific Certificate of Appropriateness (COA) application, COA #2022-25, related to a sign. She asserted that the first vote did not pass, and "[t]he second vote changed the sign post color from white to black and was then approved by the Commission."¹ Additionally, Ms. Mourousias alleged that the Commission has been approving some COA applications outside of an open meeting in violation of OMA, asserting that the Commission

¹Letter from Michelle Mourousias to Office of the Attorney General (April 26, 2023).

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votes on some COA applications "by emails addressed to all Commissioners. They do not consistently discuss and vote on these COAs at the next scheduled meeting as is required."²

On May 31, 2023, this office forwarded a copy of the Request for Review to the Board and asked it to provide a written response addressing the allegation that the Commission did not comply with sections 2.06(a) and 2.06(b) of OMA³ with respect to its September 12, 2022, special meeting minutes. This office also requested a copy of the September 12, 2022, special meeting minutes, as well as the agenda and minutes of the meeting in which those minutes were approved. On June 8, 2023, this office received the requested materials. On June 13, 2023, this office forwarded a copy of the Board's response to Ms. Mourousias; she replied on June 14, 2023.

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 (5th Dist. 1989).

"Meetings" subject to OMA

As noted above, Ms. Mourousias alleged that the Commission has been approving some COA applications outside of open meetings. Section 3.5(a) of OMA (5 ILCS 120/3.5(a) (West 2022)) delimits this office's authority to review OMA complaints as follows:

A person who believes that a violation of this Act by a public body has occurred may file a request for review with the Public Access Counselor established in the Office of the Attorney General not later than 60 days after the alleged violation. If facts concerning the violation are not discovered within the 60-day period, but are discovered at a later date, not exceeding 2 years after the alleged violation, by a person utilizing reasonable diligence, the request for review may be made within 60 days of the discovery of the alleged violation.

²Letter from Michelle Mourousias to Office of the Attorney General (April 26, 2023).

³5 ILCS 120/2.06(a), (b) (West 2021 Supp.).

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In support of her allegation, Ms. Mourousias provided this office with a copy of a December 22, 2021, e-mail chain in which the Commission's members appeared to vote on an application and a copy of the Commission's January 31, 2022, meeting minutes. Ms. Mourousias stated that she was unable to provide a more recent example of the Commission taking action on a COA application via e-mail because the Commission's meeting minutes are not posted online and thus have to be requested through a Freedom of Information Act (5 ILCS 140/1 *et seq.* (West 2022)) request. She also stated, however, that "[t]his practice is documented in the 2021 annual report they are required to file with the State of Illinois Historic Preservation Office."⁴ Because it appears that relevant information concerning the Commission's alleged practice was available in the Commission's 2021 report and because it is unclear when Ms. Mourousias learned of the December 22, 2021, e-mail chain, this office was unable to determine that Ms. Mourousias did not discover facts concerning the alleged OMA violation within 60 days after it occurred despite exercising reasonable diligence. Accordingly, this office took no further action on the allegation that the Commission improperly approves some COA applications by e-mail.

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 2022). To that end, this office reminds the Commission that OMA broadly defines a "meeting" in section 1.02 of OMA (5 ILCS 120/1.02 (West 2022)) as follows:

"Meeting" means any 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[.] (Emphasis added.)

Under this statutory definition, any contemporaneous, interactive e-mail communications involving a majority of a quorum of the Commission's members which concern "public business" would ordinarily constitute a "meeting" that would be subject to the procedural safeguards and requirements of OMA. Those requirements include providing sufficient advance notice of the meeting, providing an agenda listing the general subject matter of any item for final action, allowing the public to attend the meeting and address public officials, and keeping appropriate minutes and recordings. 5 ILCS 120/2.01, 2.02, 2.06 (West 2022).

⁴Letter from Michelle Mourousias to Office of the Attorney General (April 26, 2023).

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This office cautions the Commission against discussing matters of public business via e-mail because those communications may constitute a "meeting" under OMA. Further, this office reminds the Commission that OMA requires any final actions to be taken in a meeting that is open to the public. *See* 120 ILCS 120/2(e) (West 2022), as amended by Public Act 103-311, effective July 28, 2023 ("No final action may be taken at a closed meeting.").

Approval of Meeting Minutes

Section 2.06(b) of OMA provides, in relevant part:

A public body shall approve the minutes of its open meeting **within 30 days after that meeting or at the public body's second subsequent regular meeting**, whichever is later. The minutes of meetings open to the public shall be available for public inspection within 10 days after the approval of such minutes by the public body. * * * [A] public body that has a website that the full-time staff of the public body maintains shall post the minutes of a regular meeting of its governing body open to the public on the public body's website within 10 days after the approval of the minutes by the public body. (Emphasis added.)

In its response to this office, the Commission explained that COA applications are not frequently submitted for its review. Therefore, although it has a regular meeting schedule, the Commission does not meet on all scheduled dates. The Commission stated that it held a meeting on September 12, 2022, but cancelled subsequent meetings scheduled in September, October, November, and December. The Commission stated it intended to approve the September 12, 2022, meeting minutes at its January 30, 2023, meeting, but the minutes were inadvertently not included in the meeting packet. The Commission's Chair did not attend the January 30, 2023, meeting or the Commission's next meeting held on March 6, 2023, and did not learn of the omission until it was brought to his attention on April 5, 2023. The Commission asserted that "the September 12, 2022 minutes were added to the very next meeting, which was on April 24, 2023. The minutes were approved at that meeting with corrections."⁵ The Commission contended that "[w]hile there was a deviation from the time specified in §2.06(b), it was a one-time event and the minutes were approved as soon as the error of their omission was noted."⁶

⁵Letter from Peter K. Wilson, Jr., Mickey, Wilson, Weiler, Renzi, Lenert & Julien, P.C., to Teresa Lim, Supervising Attorney, Public Access Bureau (June 8, 2023).

⁶Letter from Peter K. Wilson, Jr., Mickey, Wilson, Weiler, Renzi, Lenert & Julien, P.C., to Teresa Lim, Supervising Attorney, Public Access Bureau (June 8, 2023).

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In this matter, it is undisputed that the Commission did not approve the minutes of its September 12, 2022, meeting minutes by its second subsequent regular meeting, which was held on March 6, 2023. Accordingly, the Commission violated the requirements of section 2.06(b) of OMA with respect to the approval of those minutes. This office reminds the Commission that it should be mindful of its obligation to approve all meeting minutes in a timely manner.

Adequacy of Minutes

Section 2.06(a) of OMA provides, in pertinent part:

All public bodies shall keep written minutes of all their meetings, whether open or closed, and a verbatim record of all their closed meetings in the form of an audio or video recording. Minute shall include, but need not be limited to: (1) the date, time and place of the meeting; (2) the members of the public body recorded as either present or absent and whether the members were physically present or present by means of video or audio conference; and **(3) a summary of discussion on all matters proposed, deliberated, or decided, and a record of any votes taken.** (Emphasis added.)

As noted above, the Commission stated that it approved the September 12, 2022, meeting minutes at its April 24, 2023, meeting and that the "[t]he minutes were approved at that meeting with corrections."⁷ In reply to that answer, Ms. Mourousias asserted that the Commission failed to adequately address her assertion that the September 12, 2022, meeting minutes did not document two votes that were taken on COA #2022-25. She explained that she attended the September 12, 2022, meeting and observed the proceedings. Ms. Mourousias elaborated, in pertinent part:

The first vote that was taken was for a white sign with white posts as is documented in the COA application made by the Little Home Church. That vote did not pass. Chairperson Kathie Connolly then decided to negotiate the color of the posts with the commissioners and changed it to black and took a second vote that passed. No

⁷Letter from Peter K. Wilson, Jr., Mickey, Wilson, Weiler, Renzi, Lenert & Julien, P.C., to Teresa Lim, Supervising Attorney, Public Access Bureau (June 8, 2023).

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where on the COA application was there a request made by Little Home Church for black posts.^[8]

This office has reviewed the approved September 12, 2022, meeting minutes. The minutes state, in relevant part:

1)COA #2022-25
Little Home Church by the Wayside
32W128 Army Trail Road
Carol Berger for LHC
New Church sign in front of church

Tony Stratton provided a mockup of the sign as proposed to illustrate size. Commission was OK with size (and many thanks to Tony for going to this extra effort.) It was determined that posts would be aluminum and painted black. Location would be where current Historic District sign is. (Village Public Works will need to take down and relocate to west of church front sidewalk, or location TBD – Chair to advise Public Works).

Multi-color rainbow and UCC blue and black logo were accepted. A concern was noted the white of the sign should match the white of the church, there was a question as to whether there are options on "white" on the HDU material. This was left to discretion of applicant.

The HDU material of the sign was accepted by all but Tony Stratton who was the lone veto with a strong preference for wood as a traditional material.

Motion was made for approval by DeAnne Appleton, seconded by Susan Abbott. With single item dissent by Tony Stratton regarding material only. Motion was approved.^[9]

On September 29, 2023, this office contacted the Commission's attorney and asked for additional information regarding the Commission's discussions concerning COA #2022-25 and any votes that were taken. In response, the Commission confirmed that the original application requested white uprights for the sign. However, the Commission denied that it took two votes on the matter:

⁸Letter from Michelle Mourousias to Teresa Lim, Office of the Attorney General (June 14, 2023).

⁹Village of Wayne Historic Sites Commission, Special Meeting, September 12, 2022, Minutes 1-2.

A number of commission members preferred black as they believed the sign would appear less large with black uprights and it would be more similar to the existing sign. During the discussion it appeared that the application would not be approved with white uprights and the applicant stated black uprights would be acceptable to the church. There was no vote taken regarding the white uprights. After the discussion to change the upright color to black there was a motion, second, and vote approving the application for the sign with black uprights. According to the Chair there was only one formal vote on the matter.^[10]

Having reviewed the submitted information, the parties provide conflicting accounts of the Commission's review of COA #2022-25 at the meeting.¹¹ Although the Commission acknowledged that there was a disagreement among its members regarding the color of the posts, it contended that it only voted on the color black for the posts. The minutes document that the Commission discussed various aspects of the proposed sign, including its location, size, and material. With respect to the sign's colors, the minutes state that "[i]t was determined that posts would be aluminum and painted black."¹² The minutes document some discussion regarding the use of the color white, stating that "[a] concern was noted the white of the sign should match the white of the church, there was a question as to whether there are options on 'white' on the HDU material."¹³ It is unclear based on the available information the extent to which the Commission deliberated on the sign posts' color and whether it took any votes, formal or informal, on the use of white for them. In light of the conflicting information regarding the nature of the Commission's discussion concerning the sign posts, this office is unable to conclude that the Commission failed to document in its September 12, 2022, meeting minutes all votes taken on COA #2022-25 in violation of section 2.06(a) of OMA. We note for the Commission, however, that section 2.06(a) requires that meeting minutes document any

¹⁰E-mail from Pete Wilson to [Teresa Lim] (October 2, 2023).

¹¹In her June 14, 2023, reply to this office, Ms. Mourousias also asserted that the Commission did not accurately record its vote and deliberations regarding another application, COA #2022-26. She asserted that the Commission took a vote without the presence of one of its commissioners, who was speaking with another petitioner at the time. Therefore, she contended that the vote was not unanimous, as documented in the minutes. Because the scope of this office's review is limited to the allegations raised in the original Request for Review submission, this office declines to address this new allegation.

¹²Village of Wayne Historic Sites Commission, Special Meeting, September 12, 2022, Minutes 1-2.

¹³Village of Wayne Historic Sites Commission, Special Meeting, September 12, 2022, Minutes 2.

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discussions on all matters proposed, deliberated, or decided. Even if the Commission does not take two votes on an application, any disagreements among its members that rise to the level of deliberation should be summarized in the minutes.

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

Very truly yours,



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cc: *Via electronic mail*
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