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Via Email homersupervisor@gmail.com and Personal Delivery

The Honorable Stephen Balich
Homer Township Supervisor
14350 W. 151st Street
Homer Glen, IL 60491

RE: Sale of Homer Township Open Space Lands

Dear Supervisor Balich:

I represent Gail Snyder and Mike Campabello residents of Homer Township and concerned citizens about the Township's actions as it relates to the proposed sale of Township Open Space Lands. The purpose of this letter is to dissuade you and your Board from proceeding on two action items listed under Old Business on this evening's agenda as items 13(c) and (d) which contemplate the sale of two tracts of land commonly known as the Purdy Property and Paul Property (hereinafter collectively referred to as the "Properties"). The Township's actions leading up to the contemplated vote on the sale of the Properties are both procedurally defective and contrary to the Illinois Township Open Space Act (ITOSA).

First, the vote of the Township Special Meeting of October 22, 2021, which allegedly authorizes the Township to sell the Properties, was in violation of 60 ILCS 1/40-15 in that the authority of the Moderator to determine the outcome of the vote was usurped by the Township Clerk and the Supervisor, and the Supervisor improperly interfered with a proper questioning of the vote by an elector by denying a statutory right to a tabulated vote through the counting of standing electors or a division of the room of yes votes and no votes. Any action to sell the Properties (including the Welter Farm and 7 strips of land brought up for the first time at the September 12, 2022 meeting) would be null and void.

Second, the notice for the October 22, 2021 special meeting did not identify the general subject matter necessary for the electors to take final action on any resolution that would authorize the Board to sell the Properties in violation of the Open Meetings Act 5 ILCS 120/2.02(c). While the notice was clear as to the transfer of six separate park facilities from the Township to the Village of Homer Glen, there was no mention of the proposed sale of open space land purchased via referendum pursuant to the ITOSA as being the subject matter of any resolution for final action.

Third, the notice for the September 12, 2022 Township meeting did not identify the general subject matter necessary for the Board to take final action on any resolution that would authorize the Board to sell the Welter Farm in violation of the Open Meetings Act 5 ILCS 120/2.02(c). The

meeting agenda as published listed on the Properties as being on the agenda for final action but made no mention of the Welter Farm. For the first time, the Welter Farm appeared in a passed resolution that was not made available to the public *prior* to the meeting and was not placed on the agenda.

Fourth, assuming for argument purposes the Board believes it has the authority to sell the Properties, which it does not, the vote which was taken at the October 22, 2021 Special Meeting by the electors of the Township did not include passage of the resolution which the Township now relies on. The only item that was voted on after a motion was made was for the authorizing of the transfer of the 6 identified parks to the Village and authorizing the Township to “sell and lease township property as presented.” There was no motion to adopt any resolution that would authorize the sale or transfer of any other property of the Township. Indeed, speaking in favor of the motion, the Supervisor said this was only for the transfer of the parks from the Township to the Village because it would save taxpayers money and the Village would take better care of the parks.

Fifth, the ITOSA does not allow for the sale or partition of open space land acquired through use of the ITOSA. The ITOSA has two distinct parts – (1) an Open Space Plan (a “Plan”) and (2) an Open Space Program (a “Program”). The Plan stage of the process identifies potential properties which the Township deems necessary to acquire to accomplish the purposes of the Program. The Program stage is when the property is either acquired in fee or lesser right (i.e., conversation easement) for open space purposes. There is no provision of the ITOSA for a Township to sell or partition off property that is in a Program for open space purposes. The only mechanism for property to be taken out of being considered *potential* open space is at the Plan stage of the process, before being acquired by the Township for open space purposes.

The Action Taken By The Electors on October ~~21~~ 22, 2021 Is Void

The vote which occurred on October 22, 2021 by way of a special meeting violated Article 40 of the Illinois Township Code 60 ILCS 1/40 *et seq.* Article 40 of the Township Code governs the conduct of proceedings at township meetings which includes Annual Meetings and Special Meetings, including the manner in which township electors vote and the process for determining the vote result. The Code provides as follows:

Sec. 40-15. Voting.

(a) All questions upon motions made at township meetings shall be determined by a majority of the electors present and voting, and the moderator shall ascertain and declare the result of the vote upon each question.

(b) When the result of any vote shall, upon the moderator's declaration, be questioned by one or more of the electors present, the moderator shall make the vote certain by causing the voters to rise and be counted or by a division of the voters.

60 ILCS 1/40-15

At the October 22, 2021 meeting the electors of the Township elected John Walters to serve as the moderator of the Special Meeting.¹ (See Attached Meeting Minutes). The moderator took the oath of office and proceeded to read out the rules for the meeting and stated that “if any vote is in doubt, there shall be a roll call vote. Upon motion with a second, the moderator called for a vote on the transfer of 6 different park properties to the Village of Homer Glen” and “to adopt and approve the proposed resolution to delegate authority to the township board to purchase, sell and lease township property, as presented?” (See Attached Meeting Minutes).

A voice vote was called by the moderator asking for Ayes and Nays, and in the opinion of the Township Clerk and not the moderator, the Ayes prevailed, and the motion passed.² An elector of the Township objected to the voice vote and called for a roll call vote twice³. The Clerk agreed, but the Supervisor interjected and stated that votes are conducted by “...let’s do a voice vote, if its close then we have a roll call. If it’s not close just do voice vote. We can do a roll call for his benefit.” The Clerk stated “NO.”

The vote as conducted is void and the Township does not have the authority under the township code to sell the Properties. Section 40-15(a) provides that only the moderator shall make ascertain the results of any voting and not the Clerk or the Supervisor. Indeed, by statute, the role of the clerk is calling the special meeting to order, determining electors for attendance and voting, administering the oath to the moderator, and keeping the records of the meeting. That’s it. The role of the Supervisor is not even mentioned in Section 40 of the Code. Yet we have the Clerk—after direction from the Supervisor—and not the moderator ascertaining the vote and determining that the “Ayes have it.” See *Smith v. Town of Proviso*, 13 Ill.App.3d 519, 525 (1st Dist. 1973) (reading the plain language of the code, only the moderator ascertains the outcome of votes and performs a tally, however, “if adequate safeguards are provided, we see no reason why the moderator may not delegate the task of counting votes to assistants so as to expedite the proceedings.”). Here, there was no such delegation to an “assistant” and especially not the Clerk or the Supervisor.

Further the plain language of the code provides that when an elector objects to the determination of a voice vote, that the moderator “*shall* make the vote certain by causing the voters to rise and be counted or by a division of the voters.” Section 40-15(b) [emphasis added]. Here, there is an unquestionable challenge to the result of the voice vote with two sperate requests for a roll call vote. Instead of having the moderator following the statutory procedure for making the vote certain, the Clerk and the Supervisor invent a new standard that says if a voice vote is subjectively close (in the opinion of either the Clerk or the Supervisor and not the moderator) then a recorded vote is allowed. The problem with this reasoning is that the electors of the township have a right to make the vote certain by being counted by standing or physically dividing into groups of ayes and nays. Only the Illinois legislature can make laws governing the conduct of special meetings, not the Clerk or the Supervisor. *Ziller v. Rossi*, 395 Ill.App.3d 130 (2nd Dist.

¹ In addition to the published meeting minutes, the October 22, 2021 meeting can be viewed <https://rumble.com/vo6dq7-10-22-2021-homer-township-special-town-meeting.html>.

² At 13:35 of the recording of the meeting, there was an audible number of nays.

³ At 14:04 is the first request for a roll call vote, 14:15 is second request for roll call vote.

2009) (actions taken at a township meeting in violation of the code are void, and a township was enjoined from taking any action based on a void vote).

The Notice Of The October 22, 2021 Meeting Violates The Open Meetings Act

The agenda notice for the October 22, 2021 Special Meeting violated the Open Meetings Act (OMA) by placing a purposefully vague item on the agenda which failed to include the general subject matter related to an unspecified resolution to authorize the “Township Board to Purchase, Sell and Lease Township Property.” Namely, the notice did not state that the final action to be taken which would amend or alter the Township’s Open Space Program.

Public notice of all meetings requires that “[a]ny agenda ... shall set forth the general subject matter of any resolution or ordinance that will be the subject of the final action at the meeting.” 5 ILCS 120/2.02(c). Section 2.02(c) of the OMA requires that a public body’s agenda include sufficient detail to notify members of the public of the types of final actions that public bodies anticipate taking. *Board of Education District No. 186 v. Attorney General of Illinois*, 2017 IL 120343, ¶¶ 32-33 (2017). Here, the special meeting listed the transfer of six individual parks to the Village of Homer Glen with what appears to be generic enabling language that allows the Township and action in furtherance of the transfer of land as contemplated. There is no mention **-none-** the Township would be taking any action to sell land designated as open space in the Township’s Program.

Now, within the last 60 days, my clients have discovered that the Township was using the agenda from the October 22, 2021 Special Meeting that resulted in final action to justify the sale of open space land, namely the Properties. This is not right and should have been disclosed on the October 22, 2021 agenda. As you are aware, a Plan was adopted by the Board on June 8, 1998 listing specific properties to be acquired through the use of an \$8,000,000 bond. On November 3, 1998, the voters of the Township approved the Plan as presented. On April 13, 1999, the voters of the Township approved the issuance of \$8,000,000 worth of bonds to fund the acquisition of the land identified pursuant to the Plan.

On November 5, 2001, the Board adopted the Program which provides “for management and use of the property in a manner and with restrictions that will leave it unimpaired for the benefit of the public for future generations... .” (See attached Plan). This was an enactment of the will of the voters which the Board is now seeking to undue through the use of an agenda item which hid that the Township was intending to undue the Program. If you proceed contrary to the state statutes, we will seek to have these final actions declared null and void. We will also seek recovery of our attorney fees pursuant to 5 ILCS 120/3(d).

The September 12, 2022 Agenda Violated The OMA As To The Welter Farm

The agenda for the September 12, 2022 Township meeting violated the OMA in that it did not give general subject matter notice that the sale of the Welter Farm was up for consideration at the Board meeting. The Purdy and Paul Farms are clearly listed on the agenda as the only being considered as part of a bidding process. As articulated above, this violates the subject matter notice

requirement of the OMA.⁴ If you proceed contrary to the state statutes, we will seek to have this final action declared null and void. We will also seek recovery of our attorney fees pursuant to 5 ILCS 120/3(d).

The October 22, 2021 Resolution Was Never Passed

The Board has decided to go forward with the Sale of the Properties based on the alleged passage of a resolution which authorized the Township to sell real property. The problem that the Board has is that there was no resolution that was adopted by motion to approve the sale or transfer of any property other than the 6 parks to the Village of Homer Glen. The minutes of the meeting reflect the following:

At this time, can we get a motion to approve the transfer to Township property pursuant to intergovernmental agreement with the Village of Homer Glen and including the following parks:

- a. Culver Park located at 14600 S. Parker Road;
- b. Goreham Park located at 14431 S Pheasant Lane;
- c. Lamers Park located at 12307 W. Lakeview Trail;
- d. Sendra Park located at 14727 S. Greenbrier Lane;
- e. Yangas Park located at 12001 W. Venetian Way; and
- f. The Ball Fields Park located at 14350 W. 151st Street

to adopt and approve the proposed Resolution to Delegate Authority to the Township Board to Purchase, Sell, and Lease Township Property, as presented? Copies of the proposed resolution were available for pickup as you entered the meeting.

At best, the moderator improperly meshed two separate final action items as one. At worst, the motion that was made only allowed for the Township to purchase, sell or lease the township property that was presented, the six parks. There was no discussion that anything other than the parks would be liquidated. The articulated purpose of this motion as stated by the Supervisor was to save tax dollars in the upkeep of the parks, and that the Village would do a better job maintaining the parks. There was no discussion of the Township being authorized to sell other parcels of real estate, especially not designated open space land within the Program.

The Township Does Not Have The Power To Sell The Properties

The ITOSA, provides no authority for the Township to sell land once acquired into an open space program. Indeed, Section 115-45 of the ITOSA limits the powers of a township to those enumerated in the Act. For instance, the Act allows the township to develop a plan to take to the voters after public hearing and after giving notice to the landowners whose property that the

⁴ While the OMA may require my clients to pursue a violation as it relates to the October 22, 2021 agenda notice with the Illinois Attorney General, the September 12, 2022 OMA violation falls within the 60 days which allows for an immediate right of private action. (do we need to point this out?)

township is seeking to acquire. The plan as defined by statute “means the written plan adopted by the board to implement an open space program and includes properly adopted amendments or additions to the plan.” 60 ILCS 1/115-5.

During the September 12, 2022 meeting the sole legal authority (aside from a quote in a newsletter from 1998) cited by the Township Clerk for the authority to sell the properties stems from the definition section of the Act which states “[a] township at any time may release a specified parcel of land from an open space plan and allow the development of the parcel to occur.” *Id.* The Township’s reliance on this section of the Act is misplaced.

First, releasing land from the open space plan is different from selling land under the open space program. There is no authority given to the township to sell open space land once acquired under the Act. In fact, the word sell only appears once in the Act and it references persons who wish to sell their land voluntarily to the township as open space.

Second, once an open space plan is approved by the voters, adopted into law, and the properties acquired, those properties become part of the program, and the powers of the Township are restricted to maintaining the property in the program for open space purposes. An open space purpose includes (i) the preservation and maintenance of open land, scenic roadways, and pathways; (ii) the holding of real property described in clause (i), with or without public access, for the education, pleasure, and recreation of the public or for other open space values; (iii) the preservation of portions of that property in their natural condition and the development of other portions of that property; (iv) the management and use of that property in a manner and with restrictions that will leave it unimpaired for the benefit of future generations; and (v) otherwise promoting the conservation of the nature, flora and fauna, natural environment, and natural resources of the township *Id.*

It is not the intent of my clients to sue the Township, but rather to preserve the open spaces that the voters approved for future generations. Should you go forward tonight contrary to the state statutes, we will have no choice but to assert our legal rights in the Circuit Court of Will County.

Sincerely,

/s/ Raymond J. Sanguinetti
Raymond J. Sanguinetti

C: Vicki Bozen, Clerk via email vbozen@homertownship.com
Mike Bonomo, Trustee via email bonomoht@gmail.com
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