



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

October 25, 2017

Via electronic mail

Ms. Diane Benjamin
Bloomington Normal News
blnnews@yahoo.com

Via electronic mail

Mr. Trevor J. Sierra
Intern, Civil Division
McLean County State's Attorney's Office
Government Center
115 East Washington Street, Room 401
Bloomington, Illinois 61702
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RE: OMA Request for Review – 2017 PAC 48811

Dear Ms. Benjamin and Mr. Sierra:

This determination letter is issued pursuant to section 3.5(e) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(e) (West 2016)). For the reasons that follow, the Public Access Bureau concludes that the McLean County (County) Zoning Board of Appeals (Zoning Board) did not approve or make available for public inspection within the time period required by OMA the written minutes of its April 4, 2017, and May 2, 2017, meetings. This office further concludes, however, that the Board was not required to post those minutes on the County's website.

BACKGROUND

On July 20, 2017, Ms. Diane Benjamin, on behalf of *Bloomington Normal News*, submitted a Request for Review to the Public Access Bureau alleging that the Zoning Board "has held numerous meetings" in 2016 and 2017 "and not posted minutes for most of them[,]"¹ in violation of section 2.06 of OMA (5 ILCS 120/2.06 (West 2016)). Ms. Benjamin stated that

¹E-mail from Diane Benjamin, BlnNews.com, to Public Access [Bureau] (July 20, 2017).

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written minutes for only three Zoning Board meetings were posted on the County's website, while agendas posted on the website indicated that a total of 18 Zoning Board meetings had been held since 2016. She further stated that in response to her July 12, 2017, Freedom of Information Act (FOIA) (5 ILCS 140/1 *et seq.* (West 2016)) request seeking copies of all minutes since June 2016 that had not been posted, the County asserted that it "provides audio recordings for the [Zoning Board] public hearings in place of minutes[.]"² and directed Ms. Benjamin to a section on its website where the recordings could be accessed.

On July 31, 2017, this office forwarded a copy of the Request for Review to the Zoning Board and asked it to provide this office with copies of minutes of its meetings held since January 2016, together with a written response to Ms. Benjamin's allegations. On August 16, 2017, this office received the requested materials. In its response, the Zoning Board stated that (1) it had recently begun posting minutes of its meetings on the County's website, including all of the minutes within the scope of Ms. Benjamin's Request for Review; (2) Ms. Benjamin's allegations concerning the meetings held prior to April 4, 2017, were untimely; and (3) it was not required to post minutes on the County's website. On August 18, 2017, this office forwarded a copy of the Zoning Board's response to Ms. Benjamin. She replied on August 21, 2017, contending that the Zoning Board was required under OMA to post all of its meeting minutes on the County's website. That same day, the Zoning Board responded, reiterating that it was not required to post minutes on the County's website. In a September 13, 2017, e-mail to the Public Access Bureau, Ms. Benjamin clarified that the only minutes that were posted at the time she submitted her Request for Review were for meetings held on May 3, 2016, May 11, 2016, and June 7, 2016.

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 2016). "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).

Time for Filing Requests for Review

Section 3.5(a) of OMA (5 ILCS 120/3.5(a) (West 2016)) provides:

²E-mail from McLean County FOIA Center to [Diane Benjamin], BLN News (July 18, 2017).

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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 60 days after the alleged OMA 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.*** The request for review must be in writing, must be signed by the requester, and must include a summary of the facts supporting the allegation. (Emphasis added.)

Ms. Benjamin's Request for Review alleged that the Zoning Board violated section 2.06(b) of OMA (5 ILCS 120/2.06(b) (West 2016)), which 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.

Under section 2.06(b) of OMA, the Zoning Board had 30 days after a meeting or until its second subsequent regular meeting, whichever was later, to approve the meeting minutes. The Zoning Board then had 10 days to make the approved minutes available for public inspection.

In its response to this office, the Zoning Board asserted: "The 60-day period of review for all Board meetings held from 2016 through March 14, 2017 had expired by the time Ms. Benjamin filed her Request for Review with the Public Access Counselor (PAC)."³ Ms. Benjamin did not address that assertion in her reply, nor has she provided this office with any facts demonstrating that, despite utilizing reasonable diligence, she had not discovered the violations she alleged until less than 60 days prior to the submission of her Request for Review. In the absence of any information indicating that the alleged violations were not discoverable within 60 days of their occurrence, this office concludes that the request to review the violations alleged to have occurred between 2016 and March 14, 2017, was not submitted within the time period required by section 3.5(a) of OMA.

³Letter from Trevor J. Sierra, Law Student, McLean County State's Attorney's Office, Intern, Civil Division, to Teresa Lim, Assistant Attorney General, Public Access Bureau (August 14, 2017), at 2.

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Based on the listing of Zoning Board meetings, however, Ms. Benjamin did submit her Request for Review within 60 days of the date that minutes of the April 4, 2017, and May 2, 2017, meetings were required to be approved.⁴ Accordingly, this office will analyze the Board's compliance with section 2.06(b) of OMA with respect to those two meetings.

Approving and Making Minutes Available for Public Inspection

Section 2.06(b) of OMA provides, in pertinent part, that "[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.) The plain language of section 2.06(b) requires only the governing body of the public body to post its meeting minutes on the public body's website. *See, e.g.*, Ill. Att'y Gen. PAC Req. Rev. Ltr. 40638, issued March 18, 2016 (Village's advisory committees not required under section 2.06(b) of OMA to post their meeting minutes online because they were not the Village's governing body). In this case, the Zoning Board is not the governing body of the County or the McLean County Department of Building and Zoning. Accordingly, this office concludes that the Zoning Board was not required to post its meeting minutes on the County's website.

Nonetheless, as cited above, section 2.06(b) requires that a *public body* approve meeting minutes and then make them available for public inspection within 10 days. In a September 25, 2017, e-mail to an Assistant Attorney General in the Public Access Bureau, the Zoning Board claimed that minutes for the April 4, 2017, and May 2, 2017, meetings were approved, but noted that "[t]he practice of the Board has been for *its Chair*, Mr. James Finnigan, to approve minutes after staff members from the Department of Building and Zoning had an opportunity to prepare [] them following a meeting." (Emphasis added.)⁵ Under the plain language of section 2.06(b), the public body as a whole, rather than its chair, must approve the minutes of an open meeting. Because the available information indicates that the Zoning Board's chair, as opposed to the Zoning Board as a whole, approved the minutes of the April 4, 2017, and May 2, 2017, meetings, this office concludes that the Zoning Board did not comply with OMA's requirements concerning the approval of minutes. This office requests that the Zoning Board approve the minutes of these two meetings during a properly noticed open meeting. This office notes, however, that the written minutes of the Zoning Board's August 1, 2017, and September 1, 2017, meetings indicate that the Zoning Board approved minutes at open meetings before the

⁴McLean County Illinois, Archive Center, Zoning Board of Appeals Minutes, <http://www.mcleancountyil.gov/Archive.aspx?AMID=64> (last visited September 18, 2017).

⁵E-mail from Trevor Sierra, Intern, Civil Division, McLean County State's Attorney's Office, to [Teresa] Lim (September 25, 2017).

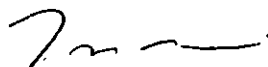
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entire Zoning Board, so it appears that the Zoning Board has amended its practice to comply with the requirements of OMA.

As to the availability of the minutes, the Zoning Board did not specifically assert that, within 10 days after approval, it had made available for public inspection the minutes of its April 4, 2017, and May 2, 2017, meetings. Rather, the Zoning Board asserted that it had recently begun posting its minutes on the County's website, including the minutes of those two meetings. According to Ms. Benjamin, the Board did not provide her with copies of written minutes for those two meetings in its July 18, 2017, response to her FOIA request. Because the Zoning Board did not provide information contradicting Ms. Benjamin's claim that as of July 20, 2017, minutes of the Zoning Board's April 4, 2017, and May 2, 2017, meetings were not available for public inspection, the available information indicates that the Zoning Board further violated section 2.06(b) of OMA. Because those minutes are now publicly accessible on the County's website, however, no further remedial action is required.

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,



TERESA LIM
Assistant Attorney General
Public Access Bureau

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