OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

September 23, 2024

Via electronic mail
[redacted]

Via electronic mail
The Honorable John R. Walz
President, Board of Commissioners
Elk Grove Park District
1000 Wellington Avenue
Elk Grove Village, Illinois 60007
commissioner@elkgroveparks.org

RE: OMA Request for Review – 2024 PAC 81146

Dear [redacted] and Mr. Walz:

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 April 23, 2024, [redacted] submitted a Request for Review to the Public Access Bureau alleging that the Board of Commissioners (Board) of the Elk Grove Park District (District) violated sections 2.02(c) and 2(e) of OMA[1] at its March 28, 2024, meeting. Specifically, [redacted] alleged that the Board considered two different versions of a resolution establishing public comment rules, but that the agenda did not indicate that two versions were the subject of potential final action at the meeting. [redacted] explained that Board President John Walz announced that the Board was considering the adoption of a resolution establishing rules for addressing public officials and referred the commissioners to their meeting packet. He

[1]5 ILCS 120/2.02(c) (West 2022); 5 ILCS 120/2(e) (West 2022), as amended by Public Act 103-311, effective July 28, 2023.

asserted that President Walz then noted that there were two versions of the resolution on the table, one that contained a 3-minute time limit and another that contained a 5-minute time limit. [redacted] contended:

> Confusion began at the moment that President Walz referenced the existence of two versions of the resolution as the public was not aware that two versions of the resolution were being considered and was further unclear as to which version of the resolution had been motioned and seconded to be voted on.[2]

By contrast, [redacted] asserted that another public body, a school district, had listed three versions of a resolution in its meeting agenda and voted on each version individually. He questioned whether the Board should have done the same. [redacted] stated that the Board's attorney subsequently "indicate[d] that the board could vote on a three minute or five-minute version or neither then the board expressed that they were voting on the version of the resolution that featured a five minute time limit."[3]

On May 2, 2024, this office forwarded a copy of the Request for Review to the Board and asked it to provide a written response to [redacted] OMA allegations. This office also requested copies of the March 28, 2024, meeting agenda, any versions of the resolution that was considered at the meeting, and the minutes. On May 13, 2024, this office received the requested materials. On May 15, 2024, this office forwarded a copy of the Board's response to [redacted]; he replied on May 22, 2024.

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 (1989).

Section 2.02(c) of OMA 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." The Public Access Bureau has previously reviewed the legislative history of this provision and determined that "the General Assembly's use of the term 'general subject matter' signifies that a meeting agenda must set forth the main element(s), rather than the

[2]Letter from [redacted] to Public Access Counselor, Office of the Attorney General (April 23, 2024), at 2.

[3]Letter from [redacted] to Public Access Counselor, Office of the Attorney General (April 23, 2024), at 4.

specific details, of an item on which the public body intends to take final action." Ill. Att'y Gen. PAC Req. Rev. Ltr. 45667, issued February 16, 2017, at 4-5 (determining that voting to sign a new city administrator to a five-year contract under the agenda item "Appointment of the City Administrator" did not violate section 2.02(c) of OMA).

Further, section 2(e) of OMA provides that "[f]inal action shall be preceded by a public recital of the nature of the matter being considered and other information that will inform the public of the business being conducted." In *Board of Education of Springfield School District No. 186 v. Attorney General*, 2017 IL 120343, ¶ 64, the Illinois Supreme Court considered the scope of the public recital requirement in section 2(e) and held that "a public recital must take place at the open meeting before the matter is voted upon; the recital must announce the nature of the matter under consideration, with sufficient detail to identify the particular transaction or issue, but need not provide an explanation of its terms or its significance."

In its response to this office, the Board contended it met the requirements of sections 2.02(c) and 2(e), asserting that "[i]t was never the intent of the Park Board to take final action on two different Resolutions 24-2[.]"[4] The Board acknowledged that the meeting packet contained two versions of the resolution but argued that the only difference between the two versions was one word, unlike the versions of the resolution in the school district matter cited by [redacted]. The Board further contended that "the question as to the three minute or five minute limitation on a speaker's comments was plainly and clearly resolved prior to final action" when one of the commissioners addressed the issue of the time limit before the Board's vote.[5] In particular, the Board asserted that before the vote, Commissioner Bob Biedke specified that the resolution under consideration was the resolution containing the 5-minute time limit.

In reply to that answer, [redacted] highlighted that even Board members appeared unclear as to which version was up for final action. He also argued that the one-word difference between the two versions of Resolution 24-02 was a substantive rather than trivial difference. [redacted] sought clarity on the following:

> The primary question in this matter is if a public body has multiple versions of a resolution within its board packet at the time of the meeting should the public body be required to formally acknowledge the existence of multiple versions of the resolution

[4]Letter from Thomas G. Hoffman to Teresa Lim, Supervising Attorney, Public Access Bureau, Office of the Attorney General, State of Illinois (May 13, 2024).

[5]Letter from Thomas G. Hoffman to Teresa Lim, Supervising Attorney, Public Access Bureau, Office of the Attorney General, State of Illinois (May 13, 2024).

> visa-vie a separate agenda item on the official agenda and with a separate and specific public recital following each separate vote.[6]

This office has reviewed the posted recording[7] of the March 28, 2024, meeting pertaining to the Board's consideration of agenda item 7b. As [redacted] described, President Walz introduced item 7b by reciting the resolution as stated in the agenda and entertaining a motion to consider the item, which was seconded. One of the commissioners began the discussion by expressing his thoughts on the issue of time limits for public comments. President Walz noted that there were two time limits on the table, one for three minutes and one for five minutes. Another commissioner weighed in on the issue, and the audience appeared at that point to ask questions about the resolution that was being considered. President Walz responded to the audience by stating that he would ask the Board's attorney but wanted to get through the discussion. Other commissioners jumped in by stating that it was one resolution but that changes could be made to it. Further Board discussion ensued, and the commissioners asked the Board's attorney questions about the resolution. A question was then asked about whether the motion needed to be amended. Commissioner Biedke responded, in relevant part:

> What I'm saying is I think the motion can stand because I think President Walz misspoke when he said there was two resolutions. There's not two resolutions, and what we made the motion on and what was seconded is correct for the simple fact that it only says five minutes in duration, there is no three. So if we would be voting for this or turning, rejecting this, we would be going at, what it says, that was given to the public, is five minutes.[8]

After Commissioner Biedke's response, the Board took a roll call vote on the resolution, which failed, and proceeded on to the next agenda item.

As discussed above, a public body must set forth in the agenda the main elements of the item on which the public body intends to take final action. A public body generally need not include details of the agenda item, such as the specific terms of an ordinance or resolution. *See, for example*, Ill. Att'y Gen. PAC Req. Rev. Ltr. 26622, issued February 27, 2018 (agenda item "Ordinance Regarding Public Comments at Council Meetings" satisfied section 2.02(c) of

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[6]Letter from [redacted] to Public Access Counselor, Office of the Attorney General (May 22, 2024), at 1.

[7]Elk Grove Village, *Park Board Meeting – March 28, 2024*, YouTube (March 28, 2024), https://egtv6.cablecast.tv/CablecastPublicSite/show/1284?site=1.

[8]Elk Grove Village, *Park Board Meeting – March 28, 2024*, YouTube (March 28, 2024), https://egtv6.cablecast.tv/CablecastPublicSite/show/1284?site=1.

OMA). In this matter, item 7b of the agenda stated: "b. Adoption of Resolution 24-02: A Resolution establishing new rules to govern and facilitate the exercise of the right of any person to have the opportunity to address public officials at any meeting thereof."[9] This agenda item sufficiently described the main elements of the resolution at issue—rules for addressing public officials at meetings. To the extent that the two versions of the resolution could be construed as separate and district, the Board only voted on one version and section 2.02(c) of OMA did not require the agenda to identify the specific time limit on public comment in that version. While the agenda could have better informed the public by noting the two different versions of the resolution that were provided in the meeting packet, a public body may discuss issues that are not included in a regular meeting agenda, provided it does not take final action on them. *See* 5 ILCS 120/2.02(a) ("The requirement of a regular meeting agenda shall not preclude the consideration of items not specifically set forth in the agenda.").

Here, the Board took final action on only one of the two versions of the resolution. The Board recited verbatim agenda item 7b and then discussed the terms of the resolution. [redacted] illustrated that there was some confusion regarding the two versions of the resolution that were in the meeting packet and the different time limits set forth in them. However, the Board provided adequate clarification before its vote that it was acting on the version of Resolution 24-02 that contained the 5-minute time limit. The time limit appears to have been the only difference in the two versions. Under these circumstances, the Board described the nature of the matter being considered (rules for addressing public officials) with sufficient detail to identify the transaction at issue (adoption of the version of rules that included a 5-minute time limit). OMA did not require the Board to take a separate vote on the version containing the 3-minute time limit. Accordingly, this office concludes that the Board's final action on Resolution 24-02 did not violate sections 2.02(c) or 2(e) of OMA.

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,

[redacted]
TERESA LIM
Supervising Attorney
Public Access Bureau

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[9]Elk Grove Park District, Agenda Item 7, New Business (March 28, 2024).

cc: *Via electronic mail*
Mr. Thomas G. Hoffman
Attorney for Elk Grove Park District
Law Office of Thomas G. Hoffman
27 North Wacker Drive, Suite 410
Chicago, Illinois 60606
parklaw7@gmail.com