

# EVERYDAY DEMOCRACY

CITIZEN ADVOCACY CENTER'S NEWSLETTER, WINTER 2006

## Center Wins Open Meetings Act Appellate Court Decision



For a second time, the Appellate Court has revived the Center's Open Meetings Act case against the DuPage County Board.

In 2003, the DuPage County Board voted on a resolution to endorse O'Hare expansion that was not placed on the published agenda. The failure of the DuPage County Board to provide the public with proper notice of what public business it was going to conduct is contrary to the basic principles of open government, and led to an Open Meetings Act lawsuit against the County.

At the 18th Judicial Circuit Court, the judge dismissed the case. The judge stated that the County Board resolution was not a binding contract and that no valid Open Meetings Act question existed. The Center appealed the dismissal to the Appellate Court and won. The Appellate Court unanimously ruled that a valid Open Meetings Act question was present, and that while public bodies may discuss issues not on the agenda, public bodies may not act upon or vote on such issues. The Appellate Court sent the case back to the Circuit Court judge to be heard again.

At the second hearing, the Circuit Court judge dismissed the case again. The judge stated that the County Board had abandoned the 2003 Resolution when they passed a 2004 Resolution on the same topic. The judge also ruled that comments made by the State's Attorney that the County Board had abandoned the 2003 Resolution was a binding judicial admission. The Center appealed the dismissal a second time.

Once again, the Appellate Court ruled in favor of the Center. The Court stated that the 2004 Resolution did not repeal the 2003 Resolution, and that a valid Open Meetings Act question was still unanswered. The Court also stated that while the litigation was more than three years old, the County Board had yet to deny violating the Open Meetings Act. The Court sent the case back to the Trial Court Judge for a third and, hopefully, a final time!

## Citizen Initiative Awards

The Citizen Initiative Awards recognize people who are catalysts for citizen participation in the democratic process. Recipients have illustrated significant and informed civic participation in their communities and have inspired others to build democracy.

### Citizens United for Forest Park (CUFP)

Citizens began organizing in 2003 when their city government was not being responsive to community concerns. CUFP has evolved into a respected ombudsmen and community watchdog that stimulates citizen awareness of community issues and empowers people to voice their concerns. CUFP successes include:

- Ensuring the city provides adequate seating to all citizens who attend Council meetings;
- Bringing a 200 unit condo development to a halt because of concerns regarding city code compliance, size, density, traffic and safety;
- Protecting the First Amendment rights of citizens who give public comment;
- Motivating the Council to air meetings on cable;
- Monitoring the city's compliance with zoning and planning ordinances;
- Persuading the city to revive a defunct Ethics Commission,
- Persuading the city to pass a Whistleblower Protection ordinance; and
- Organizing voter registration drives.

***Congratulations for being a prime example for how to build democracy at the local level!***

*CIA Recipients continued on page 2*



### Ms. Cherie Travis

Ms. Travis took action when she was not able to get answers from the DuPage County Animal Care and Control (DCAC) or the DuPage County Board regarding animal cruelty, neglect, and high euthanasia rates. Ms. Travis filed a complaint with the Illinois Department of Agriculture, made Freedom of Information Act requests to investigate DCAC's record keeping, and alerted the press to DCAC's lack of accountability and transparency.

After nearly a year of investigations, advocacy, coalition building, and working with the press, the County Board started to make changes. A new director, shelter coordinator, and veterinarian were hired; shelter hours were expanded; an advisory board was created; a nationally-recognized animal control agency was consulted; and off-site adoptions were instituted. All were reform recommendations of Ms. Travis.

***Congratulations for systemically reforming DCAC!***

### Ms. Ellen Raymond & Save the Timbers

Timber Trails Golf Course, located in unincorporated Cook County, was 105 acres of ecologically and historically significant property. Ms. Raymond established "Save the Timbers" when she learned that the golf course was going to be sold for a 340 unit subdivision development.

Ms. Raymond was tireless in her effort to preserve the land as open space. Ms. Raymond organized neighbors and worked in coalition with dozens of conservation, environmental, and historical groups, as well as with local and state officials. Ms. Raymond also spearheaded a referendum campaign that asked Lyons Township to issue bonds and use condemnation powers to preserve part of the golf course as open land. The measure passed with 52% of the vote!

Unfortunately, during a delay in Lyons Township using its condemnation powers, the General Assembly amended the statute that empowered Lyons Township to use those powers. Undeterred, Ms. Raymond is continuing the struggle to preserve some of the property as open space by working with the Township to use the approved bond monies to purchase some of the property outright.

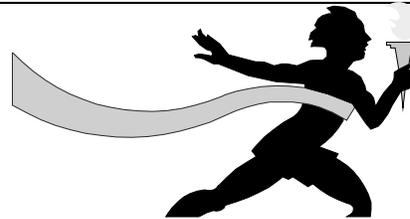
***Congratulations for outstanding and undeterred organizing efforts!***

### Ms. Linda Spicer & Ms. Sharon Fisher

In response to citizens' frustration regarding the lack of media coverage at Village Hall, Ms. Spicer and Ms. Fisher took action and published *Warrenville Today*, a weekly community newspaper. *Warrenville Today's* purpose is to keep citizens informed about current community events and government issues. The paper has a City Desk section with its own minutes of government meetings and a popular Elephant Tracks and Donkey Tails section that reports on the events of the local Republican and Democratic parties. *Warrenville Today* also encourages civic participation in community affairs. When Ms. Spicer and Ms. Fisher could not get the information they needed from their elected officials and the media, they created their own news outlet.

***Congratulations for your efforts to keep the community informed and engaged!***

# **We Need You to Meet the Challenge!**



The Citizen Advocacy Center's original funder, the Shafeek Nader Trust for the Community Interest, has issued a

challenge to the Center: raise \$5,000 in contributions of \$250 or more, and the Trust will provide the Center with \$5,000.

Matching grants are tools used by foundations to help organizations expand community support. It is also provides an opportunity for Center supporters to have their contributions count for twice as much.

The Center would like to meet this matching grant by September 31, 2006.

If you have already made a donation to the Center, thank you! If you are able to help the Center meet this challenge, your participation is appreciated! By donating to the Center, you are also helping to build democracy.

Thank you for your support!

# Democracy Watch



The Center receives more than 250 calls a year from the public seeking answers to questions of public concern. Below are current issues.

***Can a religious organization or a political group use meeting rooms in a school, library, or government office?***

*Maybe. It depends on the published purpose for the meeting rooms.* The First Amendment dictates that when a facility is opened as a public forum, anyone may use the facility regardless of the content of his/her speech. When a meeting room is designated as public space, everyone must have the same ability to use that space, as long as the uses are consistent with the purposes listed in the public body's policies and procedures.

If the public body has published "Meeting Room Policies" that clearly open the space as a public forum for the benefit of the community, any restrictions on the use of the facilities, or types of the public use, are subject to strict scrutiny. Public bodies can certainly implement reasonable time, place, and manner restrictions, but content-based restrictions are prohibited unless there is a compelling state interest. More importantly, the U.S. Supreme Court and federal courts have consistently held that exclusion of a party due to political activities, religious activities, or based on viewpoint is a content-based restriction unsupported by a compelling state interest.

Pfeifer v. West Allis, 91 F.Supp. 2d 1253 (7<sup>th</sup> Cir. 2000);  
DeBoer v. Oak Park, 267 F.3d 558 (7<sup>th</sup> Cir. 2001);  
Lamb's Chapel v. Center Moriches Union Free School Dist., 508 U.S. 384 (1993); and  
Rosenberger v. Rectors and Visitors, 115 S.Ct. 2510 (1995)

***Can citizens take away a municipality's home rule power?***

*Yes. Citizens can use a binding referendum to take away home rule power.* A binding referendum is a question posed to voters that results in mandatory government action. A referendum to remove home rule power from a municipality is a referendum seeking a change in the form of government, and as such is a binding referendum. To place a home rule referendum on the ballot, organizers must circulate a specifically worded petition that is signed by at least 10% of the number of registered voters from the last election in the municipality.

Article 7, Section 6(b) of the Illinois Constitution and Section 28-7 of the Illinois Election Code.

***Are email communications between public officials from the same public body subject to the Open Meetings Act, and can the public obtain those emails via the Freedom of Information Act?***

*Most likely, Yes. While there is no Illinois legislation, Illinois Attorney General opinion, or Illinois court ruling related to email communications being subject to the Open Meetings Act, 5 ILCS 120/1.02 defines a meeting as "any gathering of a majority of a quorum of the members of a public body held for the purpose of discussing public business." It is the opinion of the Center that email communications, or a series of email communications, sent to or between, a majority of a quorum of a public body that discusses or deliberates public business, is a meeting subject to the Act.*

*Yes, emails are subject to the Freedom of Information Act and are public records.* 5 ILCS 140/2 states that "public records include all records...regardless of physical form or characteristics, having been prepared, or having been used, received, possessed or under the control of any public body." Email clearly falls under this definition.

Citizens should ask their public bodies for copies of policies regarding email communications. If the public body has none, ask them to adopt clear guidelines that promote transparency.

**Everyday Democracy** is a publication of the **Citizen Advocacy Center**, a non-profit, nonpartisan, 501(c)(3) corporation. Submissions from citizen advocates in the western suburbs of Chicago are encouraged. The **Center** is an educational and charitable organization dedicated to building democracy for the 21st century by strengthening the public's capacities, resources, and institutions for self-governance.

If you are interested in more information, becoming a volunteer, or making a tax-deductible contribution, please feel free to contact or visit us.

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## How A Supreme Court Ruling on Eminent Domain Is Impacting Illinois

In one of the most controversial court decisions of our time, the U.S. Supreme Court ruled in *Kelo v. The City of New London* that local governments are justified in using eminent domain powers to acquire private property and in turning over property to a private developer if the public body discerns the transfer to be a "benefit" to the public.

In a response to *Kelo*, many state legislatures, including Illinois, have proposed eminent domain bills to institute safeguards against abuse of power. The proposed bills seek to strengthen protections for ordinary citizens when their property is subject to eminent domain.

The most prominent bill in Illinois is SB3086, titled "The Equity in Eminent Domain Act." The bipartisan bill is sponsored by Sen. Garrett and Sen. Cronin. Major provisions include:

- Requiring a written agreement between the public body and the private developer specifically detailing why the targeted property is necessary for the redevelopment project;



- Requiring that during condemnation proceeding, the public body must demonstrate and prove by a preponderance of the evidence that the targeted property is blighted;
- Stating that an ordinance designating property as blighted is not prima facie evidence of blight; and
- Authorizing the court to determine compensation to be paid to the displaced owners and other acquired costs, rather than leaving it to the discretion of the condemning authority.

While moving through the General Assembly, the bill has gone through revisions. For example, when originally filed the bill required that each parcel targeted had to be blighted. Now, the language states that the condemning authority must demonstrate that the *area* is blighted as defined in the Illinois Municipal Code. SB3086 has moved through the Senate and is currently in the House. To track SB3086, visit <http://www.ilga.gov/>.

*Ms. Leah Talaber, Intern, Elmhurst College*