



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

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ATTORNEY GENERAL

February 26, 2013

Ms. Paula Pezza
Elmhurst Alderman, First Ward
275 Cottage Hill
Elmhurst, Illinois 60126

Ms. Patty J. Spencer
Clerk
City of Elmhurst
209 N. York Street
Elmhurst, Illinois 60126

RE: Open Meetings Act Request for Review – 2012 PAC 21961

Dear Ms. Pezza and Ms. Spencer:

Pursuant to section 3.5 of the Open Meetings Act (OMA) (5 ILCS 120/3.5 (West 2010)), the Public Access Bureau has received a Request for Review in which Paula Pezza alleged that the Elmhurst City Council violated the provisions of OMA at its September 10, 2012, and September 17, 2012, meetings. Specifically, the Request for Review alleged that the City Council discussed certain matters in closed session that are beyond the scope of sections 2(c)(5) and 2(c)(6) of OMA (5 ILCS 120/2(c)(5),(6) (West 2011 Supp.), as amended by Public Acts 97-813, effective July 13, 2012; 97-876, effective August 1, 2012). We have considered the City Council's response to the allegations in the Request for Review, as well as Ms. Pezza's reply.

Section 2 of OMA (5 ILCS 120/2 (West 2011 Supp.), as amended by Public Acts 97-813, effective July 13, 2012; 97-876, effective August 1, 2012), provides that all meetings of public bodies "shall be open to the public" unless the subject of the meeting falls within an exception enumerated in section 2(c). Further, section 2 states that "the exceptions are to be strictly construed, extending only to subjects clearly within their scope."

According to the agendas for the September 10, 2012, and September 17, 2012, meetings, the City Council was to meet in closed session to consider the acquisition and disposition of real property.¹ The discussions at issue concerned the development and potential

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expansion of a parking garage on property owned by the City, as well as a six-month extension of a redevelopment agreement between the City and a developer for the property. Ms. Pezza asserts that the discussion of these issues in a closed session was not authorized by section 2 of OMA because: (1) the City already owned the property and therefore no acquisition of property was involved; and (2) OMA does not permit general discussions concerning the disposition of property or the extension of a development agreement in closed session.² In its response, the City Council asserts that no final action was taken during either the September 10, 2012, or September 17, 2012, closed meetings, and that the City Council voted to approve a resolution authorizing the extension of the agreement during the open portion of the September 17, 2012, meeting.

Based on our review of the verbatim recordings of the closed sessions, the City Council discussed a proposal by the developer which included the City Manager asking members whether the sale of the property to the developer was "within the ballpark" of the price that the City wished to obtain for the property. However, the City Council did not set a price for the sale or lease of the property at either meeting. In fact, some City Council members expressed concern that the City Council didn't have sufficient information regarding the market value of the property. City Council members also discussed zoning variations, the possible use of the property (office, retail or parking), and the opportunities that various zoning options would provide to the City. Notably, in addition to Ms. Pezza, who declined to attend the closed portions of the meetings, several City Council members expressed concern about discussing this matter in closed session. The Board's response to the allegations in the Request for Review asserted that the discussion of expansion of the original development plan "is necessarily directly related to the setting of the sale price/disposition of 135 Addison."³

Ms. Pezza states, and the City Council concedes in its response, that the City owns the property that was the subject of these discussions. Because the City Council was not seeking to acquire any real property, it was not permissible for it to discuss these issues in a session closed to the public pursuant to section 2(c)(5) of OMA, which is applicable only to discussions concerning "[t]he purchase or lease of real property for the use of the public body, including * * * whether a particular parcel should be acquired."

Assistant Attorney General, Public Access Bureau (December 5, 2012).

²Request for Review from Paula Pezza, Elmhurst Alderman, First Ward, to Sarah Pratt, Acting Public Access Counselor, Public Access Bureau (October 20, 2012).

³Correspondence from Donald J. Storino, Storino, Ramello & Durkin to Lindsay LaVine, Assistant Attorney General, Public Access Bureau (December 5, 2012).

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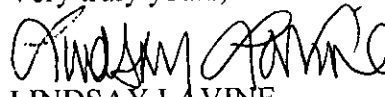
Moreover, with respect to the disposition of property, section 2(c)(6) of OMA allows public bodies to meet in closed session only to discuss matters "*directly* tied to the setting of a price." (Emphasis added.) Contrary to the City Council's contention, matters concerning the initial decision by a public body to sell or lease property, and the terms, details and processes for such sale or lease, are not topics permitted to be discussed in a closed meeting. See Ill. Att'y Gen. PAC Req. Rev. Ltr. 19244, issued June 27, 2012; see also Ill. Att'y Gen. PAC Req. Rev. Ltr. 13065, issued May 23, 2011; Ill. Att'y Gen. PAC Req. Rev. Ltr. 8948, issued November 10, 2010.

On September 10, 2012, the City Council discussed in its closed session whether to extend the time to negotiate a sale price with a developer, a proposal contingent on changing zoning laws to allow for extra levels of a parking garage, the density of the downtown area, and the best use for the downtown space. The topic of setting a price for the sale of the property never arose, and both the City Council and the city management staff admitted during the September 17, 2012, meeting that the market value of the property had not even been ascertained. Therefore, the scope of the closed session discussions far exceeded that allowed by section 2(c)(6) of OMA.

In conclusion, during its September 10, 2012, and September 17, 2012, closed sessions, the City Council improperly discussed topics that fall outside the scope of sections 2(c)(5) and 2(c)(6) of the Open Meetings Act. No other exception to the general requirement that meetings of public bodies be open to the public arguably applied to the subject of the City Council's discussions. Therefore, the City Council violated section 2(a) of the Open Meetings Act by closing these meetings to the public. In order to remedy these violations, the City Council is directed to immediately release the portions of the closed session minutes and the closed session verbatim recordings relating to the discussions in question to the public.⁴

The Public Access Counselor had determined that resolution of this matter does not require the issuance of a binding opinion. If you have any questions, please contact me at (312) 814-5201. This letter will serve to close this matter.

Very truly yours,



LINDSAY LAVINE
Assistant Attorney General
Public Access Bureau

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⁴The City Council discussed the acquisition of other properties during its September 10, 2012, and September 17, 2012, closed sessions, as well as pending litigation during its September 17, 2012, meeting. Because there is no allegation that these discussions were improper, the recordings and minutes for those portions of the closed sessions may remain confidential.