

IN THE CIRCUIT COURT FOR THE FIFTH JUDICIAL CIRCUIT  
COUNTY OF CLARK, MARSHALL, ILLINOIS

KIRK ALLEN and JOHN KRAFT	}	
	}	
Plaintiffs	}	
v.	}	
	}	
CLARK COUNTY PARK DISTRICT	}	2015-MR-4
BOARD OF COMMISSIONERS	}	
	}	
Defendant	}	

**MOTION FOR LEAVE TO FILE AMENDED COMPLAINT**

Now comes Plaintiffs, Mr. Kirk Allen, *pro se*, and Mr. John Kraft, *pro se*, who move this Court for Leave to File Amended Complaint *instanter* pursuant to Section 2-616 of the Illinois Code of Civil Procedure. In support of this Motion, Plaintiffs state as follows:

1. Plaintiffs filed *pro se* complaint on February 18, 2015 in the Circuit Court of Clark County, Illinois.
2. In the Complaint, Plaintiffs allege violations of the Open Meetings Act.
3. Attached hereto is Plaintiff's Amended Complaint changing and adding specific Counts and allegations.

WHEREFORE, Plaintiffs respectfully request that this Court grant leave to file the Amended Complaint attached hereto *instanter*, and award any further relief that this Court deems proper.

IN THE CIRCUIT COURT FOR THE FIFTH JUDICIAL CIRCUIT  
COUNTY OF CLARK, MARSHALL, ILLINOIS

KIRK ALLEN and JOHN KRAFT	)	
	)	
Plaintiffs	)	
v.	)	
	)	
CLARK COUNTY PARK DISTRICT	)	2015-MR-4
BOARD OF COMMISSIONERS	)	
	)	
Defendant	)	

**AMENDED COMPLAINT**

Plaintiffs, ALLEN and KRAFT, *pro se*, state as follows for their Amended Complaint against the Clark County Park District Board of Commissioners (the "Board"):

**INTRODUCTION**

1. On February 17, 2015 the Board took final action on agenda items referred to herein as "Lease Rates" and "Revised Covenants". The Board took those actions without providing the required notice setting forth the general subject matter of the items subject to final action on the agenda as required in Section 2.02(c) of the Open Meetings Act ("Act") [5 ILCS 120/], and without preceding the final action 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 as required in Section 2(e) of the Act.

2. The Board did not make public a copy of the proposed lease rates and revised covenants prior to the meeting.

3. The Board did not precede its final action with a public recital of the nature of the lease rates and revised covenants. See Exhibit C.

4. The Board did not precede final action with a public recital of other information that will inform the public of the business being conducted. See Exhibit C.

5. In short, the Board kept the contents of the lease rates and revised covenants secret until after and at a later day of the meeting on February 17, 2015 - even going so far as stating during the meeting that "as soon as this gets recorded at the courthouse then they will be available for public inspection" and that "we got to record them at the courthouse first". See Exhibit C.

6. The Board's actions were a violation of the Sections 2.02(c) and 2(e) of the Act.

7. The Board's actions were not consistent with the principles of open government and transparency that are embodied in the Open Meetings Act.

8. This is an action for injunctive and declaratory relief arising from violations of the Open Meetings Act associated with the February 17, 2015 meeting of the Board

to enjoin certain actions under those measures, to enjoin any further violations of the Open Meetings Act, and to declare the Board's approval of the "lease rates" and "revised covenants" to be void *ab initio*.

#### **PARTIES**

9. Plaintiffs are both residents of Illinois.

10. Defendant is a public body as defined under the Illinois Open Meetings Act with its principal place in the County of Clark.

#### **JURISDICTION AND VENUE**

11. This Court has jurisdiction to grant injunctive and declaratory relief pursuant to 735 ILCS 5/2-101, 735 ILCS 5/2-209(b) and (c) and 735 ILCS 5/2-701 because the Defendant is a resident of Clark County, and the actions at issue occurred in Clark County.

12. This Court has jurisdiction to grant injunctive and declaratory relief pursuant to Section 3(c) of the Open Meetings Act [5 ILCS 120/3(c)] and 735 ILCS 5/2-701 because an actual controversy exists between the parties and a declaration of the parties' rights will fully resolve that controversy.

13. Plaintiffs have standing to bring this action pursuant to 5 ILCS 120/3(a).

## ALLEGATIONS

14. Over the past few months the Board has held its regular meetings at the Park District main office building.

15. The Board conducted its regular meeting on February 17, 2015 at 6:00 p.m. See Exhibit A.

16. The agenda for the February 17 meeting contained agenda item X, which read "Board Approval of Lease Rates", which did not set forth the general subject matter of the item subject to final action with enough information to let the public know what general subject would be voted on. See Exhibit A.

17. The agenda for the February 17 meeting contained agenda item XI, which read "Board Approval of Revised Covenants", which did not set forth the general subject matter of the item subject to final action with enough information to let the public know what general subject would be voted on. See Exhibit A.

18. The Board posted a copy of the agenda on its website, but did not post the proposed lease rates and revised covenants. See Exhibit A.

19. Upon information and belief, the lease rates and revised covenants were purposely omitted to avoid public scrutiny.

20. A true and correct copy of the February 17, 2015 Meeting Agenda is attached hereto as Exhibit A.

21. During the February 17, 2015 meeting, the Board took final action on agenda item X, "Board Approval of Lease Rates" without preceding its final action with a public recital of the nature of the matter being considered and other information that will inform the public of the business being conducted as required in Section 2(e) of the Act. See Exhibit C.

22. During the February 17, 2015 meeting, the Board took final action on agenda item XI, "Board Approval of Revised Covenants" without preceding its final action with a public recital of the nature of the matter being considered and other information that will inform the public of the business being conducted as required in Section 2(e) of the Act. See Exhibit C.

23. During the brief discussion of Items X and XI the Board did not actually discuss the items, but merely restated the text of the items as they appeared on the agenda. See Exhibits A and C.

24. At no time during this brief discussion did any member of the Board advise the public of anything other than the text of the items as they appeared on the agenda. See Exhibit C.

25. The Board adopted both agenda items with a vote of 4-2 on each item. See Exhibit C.

26. After the final actions were completed, a citizen present at the meeting asked Commissioner Stone if he would tell her what they just voted on and he declined. See Exhibit C.

27. After the meeting members of the public still did not have access to copies of the lease rates and revised covenants.

28. On information and belief, the Board's secretive conduct strongly suggests that the Board intended to vote on the measure without ever informing the public of what they were actually voting on and while keeping the information from becoming known to the public at the meeting.

**COUNT ONE: OPEN MEETINGS ACT VIOLATION**

29. Plaintiffs restate and reallege Paragraphs 1-28 as though fully restated and realleged as this Paragraph 29 herein.

30. Defendant violated the Illinois Open Meetings Act, Section 2.02(c), [5 ILCS 120/2.02(c)] by failing to post an agenda that adequately identified the general

subject matter of agenda item number X, "Board Approval of Lease Rates" for the February 17, 2015 meeting.

31. Plaintiffs seek a declaration that Defendant has violated the Open Meetings Act by the actions and omissions enumerated in Paragraph 30, as well as a declaration that the final action to approve the "Lease Rates" is null and void.

32. Plaintiffs seek injunctive relief to bar the Board from taking any actions to implement or effectuate the terms of the lease rates until such time as the Court adjudicates this claim.

33. Plaintiffs request temporary, preliminary, and permanent injunctive relief to enjoin further violations of the Open Meetings Act, including an order requiring that any future Board agendas adequately inform the public of the general subject matter of items for final action.

34. Plaintiffs have no adequate remedy at law.

**WHEREFORE**, Plaintiffs respectfully requests that this Court enter judgment in favor of Plaintiff and grant the following relief:

- (1) Enter a preliminary injunction barring effectuation or implementation of the "Lease Rates"; and,



- (2) Declare that Defendant has violated the Open Meetings Act, Section 2.02(c); and,
- (3) Declare the final actions approving the "Lease Rates" null and void; and,
- (4) Enjoin Defendant from future violations of the Open Meetings Act, Section 2.02(c); and,
- (5) Award Plaintiff any costs, fees, and other such relief as this Court deems just and necessary.

**COUNT TWO: OPEN MEETINGS ACT VIOLATION**

35. Plaintiffs restate and reallege Paragraphs 1-28 as though fully restated and realleged as this Paragraph 35 herein.

36. Defendant violated the Illinois Open Meetings Act, Section 2.02(c), [5 ILCS 120/2.02(c)] by failing to post an agenda that adequately identified the general subject matter of Item number XI, "Board Approval of Revised Covenants" for the February 17, 2015 meeting.

37. Plaintiffs seek a declaration that Defendant has violated the Open Meetings Act by the actions and omissions enumerated in Paragraph 36, as well as a declaration that the final action to approve the "Revised Covenants" is null and void.

38. Plaintiffs seek injunctive relief to bar the Board from taking any actions to implement or effectuate the terms of the revised covenants until such time as the Court adjudicates this claim.

39. Plaintiffs request temporary, preliminary, and permanent injunctive relief to enjoin further violations of the Open Meetings Act, including an order requiring that any future Board agendas adequately inform the public of the general subject matter of items for final action.

40. Plaintiffs have no adequate remedy at law.

**WHEREFORE**, Plaintiffs respectfully requests that this Court enter judgment in favor of Plaintiff and grant the following relief:

- (1) Enter a preliminary injunction barring effectuation or implementation of the "Revised Covenants"; and,
- (2) Declare that Defendant has violated the Open Meetings Act, Section 2.02(c); and,
- (3) Declare the final action approving the "Revised Covenants" null and void; and,
- (4) Enjoin Defendant from future violations of the Open Meetings Act, Section 2.02(c); and
- (5) Award Plaintiff any costs, fees, and other such relief as this Court deems just and necessary.

**COUNT THREE: OPEN MEETINGS ACT VIOLATION**

41. Plaintiffs restate and reallege Paragraphs 1-28 as though fully restated and realleged as this Paragraph 41 herein.

42. Defendant violated the Illinois Open Meetings Act, Section 2(e), [5 ILCS 120/2(e)] by failing to precede the final action of agenda item X, "Board Approval of Lease Rates", with a public recital of the nature of the matter being considered and other information that would inform the public of the business being conducted during the February 17, 2015 meeting.

43. Plaintiffs seek a declaration that Defendant has violated the Open Meetings Act by the actions and omissions enumerated in Paragraph 42, as well as a declaration that the final action to approve the "Lease Rates" is null and void.

44. Plaintiffs seek injunctive relief to bar the Board from taking any actions to implement or effectuate the terms of the lease rates until such time as the Court adjudicates this claim.

45. Plaintiffs request temporary, preliminary, and permanent injunctive relief to enjoin further violations of the Open Meetings Act, including an order requiring that

any future final action be preceded by a public recital of the nature of the matter being considered and other information that would inform the public of the business being conducted.

46. Plaintiffs have no adequate remedy at law.

**WHEREFORE**, Plaintiffs respectfully requests that this Court enter judgment in favor of Plaintiff and grant the following relief:

- (1) Enter a preliminary injunction barring effectuation or implementation of the "Lease Rates"; and,
- (2) Declare that Defendant has violated the Open Meetings Act, Section 2(e); and,
- (3) Declare the final action approving the "Lease Rates" null and void; and,
- (4) Enjoin Defendant from future violations of the Open Meetings Act, Section 2(e); and
- (5) Award Plaintiff any costs, fees, and other such relief as this Court deems just and necessary.

**COUNT FOUR: OPEN MEETINGS ACT VIOLATION**

47. Plaintiffs restate and reallege Paragraphs 1-28 as though fully restated and realleged as this Paragraph 47 herein.

48. Defendant violated the Illinois Open Meetings Act, Section 2(e), [5 ILCS 120/2(e)] by failing to precede the final action of agenda item XI, "Board Approval of Revised Covenants", with a public recital of the nature of the matter being considered and other information that would inform the public of the business being conducted during the February 17, 2015 meeting.

49. Plaintiffs seek a declaration that Defendant has violated the Open Meetings Act by the actions and omissions enumerated in Paragraph 48, as well as a declaration that the final action to approve the "Board Approval of Revised Covenants" is null and void.

50. Plaintiffs seek injunctive relief to bar the Board from taking any actions to implement or effectuate the terms of the revised covenants until such time as the Court adjudicates this claim.

51. Plaintiffs request temporary, preliminary, and permanent injunctive relief to enjoin further violations of the Open Meetings Act, including an order requiring that any future final action be preceded by a public recital of the nature of the matter being considered and other information that would inform the public of the business being conducted.

52. Plaintiffs have no adequate remedy at law.

**WHEREFORE**, Plaintiffs respectfully requests that this Court enter judgment in favor of Plaintiff and grant the following relief:

- (1) Enter a preliminary injunction barring effectuation or implementation of the "Revised Covenants"; and,
- (2) Declare that Defendant has violated the Open Meetings Act, Section 2(e); and,
- (3) Declare the final action approving the "Revised Covenants" null and void; and,
- (4) Enjoin Defendant from future violations of the Open Meetings Act, Section 2(e); and
- (5) Award Plaintiff any other such relief as this Court deems just and necessary.

## Exhibit B

This Exhibit includes the full text from Section 2(e) and Section 2.02(e) of the Open Meetings Act [5 ILCS/140/]

Sec. 2. Open meetings.

(e) Final action. No final action may be taken at a closed meeting. Final 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.

(Source: P.A. 97-318, eff. 1-1-12; 97-333, eff. 8-12-11; 97-452, eff. 8-19-11; 97-813, eff. 7-13-12; 97-876, eff. 8-1-12; 98-49, eff. 7-1-13; 98-63, eff. 7-9-13; 98-1039, eff. 8-25-14.)

(5 ILCS 120/2.02) (from Ch. 102, par. 42.02)

Sec. 2.02. Public notice of all meetings, whether open or closed to the public, shall be given as follows:

(c) Any 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 body conducting a public meeting shall ensure that at least one copy of any requested notice and agenda for the meeting is continuously available for public review during the entire 48-hour period preceding the meeting. Posting of the notice and agenda on a website that is maintained by the public body satisfies the requirement for continuous posting under this subsection (c). If a notice or agenda is not continuously available for the full 48-hour period due to actions outside of the control of the public body, then that lack of availability does not invalidate any meeting or action taken at a meeting.

(Source: P.A. 97-827, eff. 1-1-13.)

## EXHIBIT C

At the link <http://youtu.be/QJT9SLJitB4>, or on the attached DVD, the video of this portion of the meeting shows the final action taken and the process (timeline) used by the Board as follows:

-At approximately the 00:06 mark in the video, Commissioner Stone says: "Approval of, or the lease rates, entertain a Motion".

-Immediately after 00:16, Commissioner Yargus states: "I'll make the Motion that we accept the lease rates that we came up with from the appraisal"

-There was a second and then no further discussion except to clarify that the Motion was to accept the lease rates that they have as listed.

-At approximately 1:03 in the video, Stone says: "Board approval for the revised covenants". Yargus then states that: "I'll make a motion that we accept the revised covenants". There was a second and no further discussion.

-Stone then says that once these get recorded at the courthouse then these will be available for viewing for public record, now that they've been approved.

-At about the 1:40 mark in the video a citizen asked if they could tell her what was in the documents they just approved. The board again declined to provide that information.



IN THE CIRCUIT COURT FOR THE FIFTH JUDICIAL CIRCUIT  
COUNTY OF CLARK, MARSHALL, ILLINOIS

KIRK ALLEN and JOHN KRAFT	}	
	}	
Plaintiffs		
v.		
CLARK COUNTY PARK DISTRICT		2015-MR-4
BOARD OF COMMISSIONERS		
Defendant	}	

**MEMORANDUM IN SUPPORT OF AMENDED COMPLAINT**

Plaintiffs, Kirk Allen and John Kraft, *pro se*, state as follows for their Memorandum in Support of Complaint:

**BACKGROUND**

This is not the first instance the Clark County Park District Board of Commissioners ("Board") has violated the Open Meetings Act.

As recent as **May 12, 2014**, the Board violated the Act by refusing to allow public comment at its meeting and the Board subjected itself to a citizen's arrest under the Illinois Code of Criminal Procedure [725 ILS 5/], Sections 107-3 and 107-5, pursuant to Section 4 of the Act for violation of Section 2.06(g) of the Act, *Right to Speak*. Mr. Allen subsequently filed a *pro se* lawsuit which reached a settlement on June 26, 2014 with the assurance that the Board has enacted a set of rules and regulations confirming the need to allow public participation

and providing rules and regulations to guide the Board in such matters. See settlement agreement attached hereto as **Exhibit D.**

Again, on **July 17, 2014,** the Board took final action in the form of voting to hire an attorney when the published agenda had no such agenda item listed. Prior to the vote Mr. Kraft asked the Board President, Commissioner Stepp, if the agenda item listed as "Pursuit of Attorney" was meant to hire an attorney and Stepp replied that they were only going to talk about it. The Board then motioned and voted to hire an attorney. Kraft later sent a letter to Stepp asking that the item be reconsidered at the next Board meeting. See emailed letter attached hereto as **Exhibit E.**

During the next Board meeting, **August 21, 2014,** the agenda item "Reaffirmation of Hiring an Attorney" was properly placed on the agenda and voted on. See Agenda attached hereto as **Exhibit F.**

On **November 7, 2014** the Board opened a meeting (retreat) without posting the agenda at the location of the meeting as required in the Act, and was also holding the meeting at a place not convenient to the public. Mr. Kraft appeared, voiced his objections to the board citing the Act, talked with the Board's attorney over the phone, and the Board terminated the meeting. See Director's Report attached hereto as **Exhibit G.**

Even after this Cause was filed, the Board attempted to use an agenda during its **March 19, 2015** Regular Meeting that had not been posted at least 48 hours prior to the meeting. The agenda that was posted on their website did not have an agenda item VII(b) "Lease Lot Covenants - Approval of Revision". See agenda posted on district web page attached hereto as **Exhibit H**. The agenda Commissioner Stone was using at the meeting listed item VII(b) "Lease Lot Covenants - Approval of Revision", which was not posted 48 hours in advance of the meeting as required in Section 2.02(a) of the Act, and a citizen who attended the meeting informed Janet Morecraft, a District employee, of that fact and Commissioner Stone in turn decided to table the item during the meeting as can be seen at approximately the 1:38 mark in the video located at this url:

"<https://www.youtube.com/watch?v=-CRTUHNLDs0&feature=youtu.be>"

See agenda and sworn affidavit of Mrs. Dee Reel attached hereto as **Exhibit I**.

This leads us to the meeting in question in this cause.

### **INTRODUCTION**

Plaintiff's Amended Complaint alleges violations of the Open Meetings Act ("Act") [5 ILCS 120/] on **February 17, 2015**, and specifically a violation of Section **2.02(c)** of the Act by failing to post an agenda setting forth the general subject

matter of the item subject to final action, and violation of Section 2(e) of the Act by failing to precede the Board's final action with a public recital of the matters being voted on ("Lease Rates" and "Revised Covenants"). These are actual violations of Sections 2.02(c) and 2(e) of the Act. See the Meeting Agenda attached hereto as Exhibit A which is also an exhibit in Complaint. See also Sections 2.02(c) and 2(e) of the Act attached hereto as Exhibit B. See also the video taken during the meeting which includes the portion of the meeting after the Board's return to Open Session after their Closed Executive Session, and located at "<http://youtu.be/QJT9SLJitB4>" and attached hereto as Exhibit C.

#### **I. The Agenda - "Board Approval of Lease Rates"**

A. The posted agenda (Exhibit A) for the Board's February 17, 2015 meeting states in Item Number X, "Board Approval of Lease Rates". This does not give the public enough information of the general subject matter for final action for them to determine whether they want to attend the meeting. What was the Board contemplating on leasing? Was it the lawnmower, copying machine, personnel, backhoe, dock space? There was no way of knowing, from the listed agenda item, what actually was going to be leased. In short, it was too broad a statement to inform the public of the general subject matter being acted on.

Posting the agenda along with copies of the proposed final actions would have brought the Agenda within the requirements of section 2.02 of the Open Meetings Act [IL ATTY GEN OP 14-001, Apr 10, 2014, at bottom of Pg 6].

## **II. The Agenda - "Board Approval of Revised Covenants"**

B. The posted agenda (Exhibit A) for the Board's February 17, 2015 meeting states in Item Number XI, "Board Approval of Revised Covenants". This does not give the public enough information of the general subject matter for final action for them to determine whether they want to attend the meeting. Was there an initial covenant that led to these revised covenants? What are the covenants for? What was the Board agreeing to do? Deed, Lease, Contract, Guarantee, Promise, Warrant, etc? Were they revising the Sacred Agreement (Covenant) between God and the People? There was no way of knowing, from the listed agenda item, what general subject matter was actually was being agreed to in the revised covenants. In short, it was too broad a statement to inform the public of the general subject matter being acted on.

Make no mistake about it; this Board knows how to properly identify an agenda item for action. See Agenda from August 21, 2014, Exhibit F, Item VI(a)(iii), for an example of this Board properly identifying the general subject matter for final

action, "Approval of Covenants for Mill Creek Ridge", from a meeting six months previous.

In the absence of proper notification on the agenda, but with an agenda item too vague, posting the agenda along with copies of the proposed final actions would have brought the Agenda within the requirements of section 2.02 of the Open Meetings Act (IL ATTY GEN OP 14-001, Apr 10, 2014, at bottom of Pg 6).

### **III. The Final Action - Timeline**

After returning from a Closed Meeting back to the Open Meeting, the Board took final action on two items. In Exhibit C, or at the link <http://youtu.be/QJT9SLJitB4>, the video of this portion of the meeting shows the final action taken and the process (timeline) used by the Board as follows:

-At approximately the 00:06 mark in the video, Commissioner Stone says: "Approval of, or the lease rates...entertain a Motion".

-Immediately after (~0:16), Commissioner Yargus states: "I'll make the Motion that we accept the lease rates that we came up with from the appraisal"

-There was a second and then no further discussion except to clarify that the Motion was to accept the lease rates that they have as listed.

-At approximately 1:03 in the video, Stone says: "Board approval for the revised covenants". Yargus then states that: "I'll make a motion that we accept the revised covenants". There was a second and no further discussion.

-Stone then says that once these get recorded at the courthouse then these will be available for viewing for public record...now that they've been approved.

-At about the 1:40 mark in the video a citizen asked if they could tell her what was in the documents they just approved. The board again declined to provide that information.

#### **IV. The Final Action - "Board Approval of Lease Rates"**

As the video shows, final action was taken on agenda item "Board Approval of Lease Rates" without preceding the vote with a public recital of the nature of the matter being considered and other information that will inform the public of the business being conducted. This action violated Section 2(e) of the Act.

#### **V. The Final Action - "Board Approval of Revised Covenants"**

As the video shows, final action was taken on agenda item "Board Approval of Revised Covenants" without preceding the vote with a public recital of the nature of the matter being

considered and other information that will inform the public of the business being conducted. This action violated Section 2(e) of the Act.

The Open Meetings Act, 5 ILCS 120/

**VI. Section 2.02(c)**

Both items I and II, above, from the February 17, 2015 Agenda violated the Act in Section 2.02(c), which states that:

(c) Any 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 body conducting a public meeting shall ensure that at least one copy of any requested notice and agenda for the meeting is continuously available for public review during the entire 48-hour period preceding the meeting. Posting of the notice and agenda on a website that is maintained by the public body satisfies the requirement for continuous posting under this subsection (c). If a notice or agenda is not continuously available for the full 48-hour period due to actions outside of the control of the public body, then that lack of availability does not invalidate any meeting or action taken at a meeting. (Source: P.A. 97-827, eff. 1-1-13.)

The "General Subject Matter" should be informative enough for the public to generally know what action is being considered. For example: "Approval of Revised Covenants of Mill



Creek Ridge", had that been the revised covenants being voted on.

When a public body had failed to adequately identify the general subject matter for final action on its agenda, the Illinois Attorney General has determined that posting the agenda along with copies of the proposed final actions would have brought the Agenda within the requirements of section 2.02 of the Open Meetings Act [IL ATTY GEN OP 14-001, Apr 10, 2014, at bottom of Pg 6].

#### **VII. Section 2(e)**

Section 2(e) states:

(e) Final action. No final action may be taken at a closed meeting. Final 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.

(Source: P.A. 97-318, eff. 1-1-12; 97-333, eff. 8-12-11; 97-452, eff. 8-19-11; 97-613, eff. 7-13-12; 97-676, eff. 8-1-12; 98-49, eff. 7-1-13; 98-63, eff. 7-9-13; 98-1039, eff. 8-25-14.)

There are two requirements to be met when taking final action, assuming the Agenda is correct: (1) the Board must precede any vote by a public recital of the "nature" of the matter being considered, and, (2) the Board must also include

"other information" that will inform the public of the business being conducted in its public recital. As shown in the video, the only things stated by the Board were "Board Approval of Lease Rates" and "Board Approval of Revised Covenants" - neither of these passes the first requirement of informing the public of the nature of the matter being considered, IE: what is being leased, and what the covenants are for.

The Board also failed to recite "other information" that will inform the public of the business being conducted, which was a failure of the second requirement of this Section. This "other information" would include dollar amounts, terms, length of lease, and what is being leased for the "approval of lease rates" agenda item, and would also include items contained within the "Board Approval of Revised Covenants" such as terms, conditions, establishment of a committee, etc. None of this was publicly recited preceding final action, and consequently, the Board violated Section 2(e) of the Act.

#### CONCLUSION

Plaintiff's have demonstrated, and the video shows that Defendant violated the Open Meetings Act as stated in COUNT ONE of the Complaint by Defendant's failure to put forth the "General Subject Matter" as an item on the published Agenda, "Board Approval of Lease Rates" [5 ILCS 120/2.02(c)]; that

Defendant had violated the Open Meetings Act as stated in COUNT TWO of the Complaint by Defendant's failure to put forth the "General Subject Matter" as an item on the published Agenda, "Board Approval of Revised Covenants" [5 ILCS 120/2.02(c)]; that Defendant had violated the Open Meetings Act as stated in COUNT THREE of the Complaint by Defendant's failure to precede final action 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 for "Board Approval of Lease Rates" [5 ILCS 120/2(e)]; and that Defendant had violated the Open Meetings Act as stated in COUNT FOUR of the Complaint by Defendant's failure to precede final action 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 for "Board Approval of Revised Covenants" [5 ILCS 120/2(e)].

Precedential Authority for declaring a final action taken during open session as null and void can found in *Rice v. Adams County, NO. 4-01-0327*, 4<sup>th</sup> District Appellate Court, where the Court upheld a Trial Court's decision to declare an action taken in open session null and void because the general subject matter of the proposed action was not properly annotated on the agenda.

**WHEREFORE**, for the foregoing reasons, Plaintiffs respectfully requests that this Honorable Court find in favor of Plaintiffs on all Counts and on all prayers for relief as stated in Amended Complaint.

Dated: April 10, 2015

Respectfully submitted