

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

KIRK ALLEN and JOHN KRAFT,)
Plaintiffs,)
v.)
CLARK COUNTY PARK DISTRICT)
BOARD OF COMMISSIONERS,)
Defendant.)

Case No. 2015-MR-4

COMBINED MOTION TO DISMISS AND SUPPORTING MEMORANDUM

The Defendant, CLARK COUNTY PARK DISTRICT BOARD OF COMMISSIONERS, by its attorneys, Lorna K. Geiler of Meyer Capel, A Professional Corporation, moves for dismissal of this action pursuant to 735 ILCS 5/2-615 because the Plaintiffs have failed to allege any violation of the Open Meetings Act.

Introduction

On February 18, 2015, Plaintiffs Kirk Allen and John Kraft ("Plaintiffs") filed their one-count complaint (the "Complaint") against the Clark County Park District Board of Commissioners (the "Board"), claiming that the Board violated the Open Meetings Act with respect to its regular meeting of February 17, 2015 (the "Meeting"). Plaintiffs allege that the Board did not provide proper notice of certain actions taken in the Meeting, even though the items were designated in the agenda for the Meeting (the "Agenda") as "Board approval of Lease Rates" and "Board Approval of Revised Covenants" (together, the "Disputed Actions"). See the Meeting Agenda attached hereto as Exhibit A which is also an Exhibit to the Plaintiffs' Complaint. Plaintiffs also allege that the Board did not allow the public to "meaningful[ly]" participate in the Meeting. None of Plaintiffs' factual allegations describe conduct in violation of the Open Meetings Act. At best, Plaintiffs are disappointed that the Board did not adhere to Plaintiffs' own idiosyncratic view of the policy underlying the Open Meetings Act. Because Plaintiffs have failed to allege any actual violation of the Open Meetings Act, their cause of action against the Board should be dismissed.

Argument

Legal Standard

Plaintiffs have failed to allege a violation of the Open Meetings Act and have therefore failed to state a claim on which relief can be granted. To survive dismissal under section 2-615, the Complaint must contain sufficient facts to support a legally recognized cause of action. *Laubner v. JP Morgan Chase Bank, N.A.*, 386 Ill. App. 3d 457, 462, 898 N.E.2d 744, 750 (4th Dist. 2008). A motion to dismiss under section 2-615 of the Code of Civil Procedure admits only the specific factual allegations presented in the Complaint. *Id.* Though the Complaint is to be construed liberally in favor of the Plaintiffs, conclusions of law and conclusory factual allegations are to be disregarded. *Id.*

The Board's Meeting Agenda is Sufficient under the Open Meetings Act

Plaintiffs alleged that the Board violated the Open Meetings Act by "failing to post an agenda that adequately identified the subject matter" of the Disputed Actions and by "refusing to advise the public of what was up for discussion, refusing to precede [sic] the votes 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, thus preventing them from participating" (Compl. ¶ 26.) Plaintiffs claim that this conduct violates 5 ILCS 120/2.02(c), 120/1, 120/2(e), and 120/2.06(g). A review of the specific factual allegations in the Complaint demonstrates that the Board adhered to the Open Meetings Act in every way.

Plaintiffs' first allegation, that the agenda did not adequately describe the Disputed Actions, is without merit. The Open Meetings Act requires the Board to post "[a]n agenda for each regular meeting . . . at least 48 hours in advance of the holding of the meeting." 5 ILCS 120/2.02(a). Such agenda must "set forth the general subject matter of any resolution or ordinance that will be the subject of final action at the meeting." 5 ILCS 120/2.02(c). This requirement is

quite limited, as “the requirement of a regular meeting agenda shall not preclude the consideration of items not specifically set forth in the agenda.” 5 ILCS 120/2.02(a).

Plaintiffs purport to question the sufficiency of the description of the Disputed Actions in the Meeting’s agenda. Plaintiffs’ allegations involve Agenda item X, “Board approval of Lease Rates,” and Agenda item XI, “Board Approval of Revised Covenants.” (Compl. ¶ 13 & Compl. Ex. A.) Plaintiffs do not claim that these descriptions are misleading or inaccurate, rather they allege the Agenda “did not describe the substance of any proposed lease rates or revised covenants, nor did it specify what the subject of the lease rates or revised covenants might be.” (Compl. ¶ 13.) Such a description is clearly not required by statute or otherwise.

“[The] Open Meetings Act does not require that an agenda be specifically detailed or that it be tailored to reach those specific individuals whose private interests are most likely to be affected by the actions of the public body.” *In re Foxfield Subdivision*, 396 Ill. App. 3d 989, 997, 920 N.E.2d 1102, 1110 (2d Dist. 2009). Indeed, the statute specifically states:

5 ILCS 120/2.02

(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. (emphasis added).

In *Foxfield Subdivision*, the court determined that the agenda item “Discussion and Consideration of potential annexation of property” was sufficient to allow the board to **actually annex** a piece of property. *Id.* Though the case involved a special meeting, with slightly different notice rules, the court stated: “even if we were to apply the provision regarding regular meetings, the agenda clearly informed the public that a potential annexation was to be discussed and considered.” *Id.*, 396 Ill. App. 3d at 995–96, 920 N.E.2d at 1108. In contrast, in *Rice v. Bd. of Trustees of Adams Cnty.*, Ill., 326 Ill. App. 3d 1120, 1123, 762 N.E.2d 1205 (4th Dist. 2002). , the court found that the agenda item “NEW BUSINESS” was inadequate to allow the board at issue to approve a resolution providing for an alternative pension benefit program for elected county officials. p. 1207.

The descriptions of the Disputed Actions are not super-generic like those in *Rice*. They give sufficient notice of the nature of the action to be taken by the Board. Indeed, the descriptions are **actually more specific** than those in *Foxfield Subdivision*. In *Foxfield Subdivision*, the agenda described only deliberations, not a final action; the court found that a final action was within the scope of the agenda item. Here, specific final actions were listed in the agenda and those final actions are being challenged. The Agenda provides more than enough notice of the general character of the Disputed Actions, which is all that is required by the Open Meetings Act. Thus, the Board did not violate section 2.02(c) of the Open Meetings Act.

The Public was Not Denied its Rights Under the Open Meetings Act

Plaintiffs next seem to claim that the Board’s failure to provide detailed lease rates and revised covenants deprived the public of meaningful participation in the Meeting, in violation of

5 ILCS 120/1, 120/2(e), and 120/2.06(g). The Defendant states "seem to claim" because the Complaint is not clear as to which actions or omissions violate which sections of the Open Meetings Act, so Plaintiffs' intent will have to be inferred from the general allegations in the Complaint.

Section 1 of the Open Meetings Act is entitled "Policy" and contains only declarations of the legislative purpose of the Open Meetings Act. 5 ILCS 120/1. As a declaration of policy, it is not entitled to independent force of law. "A declaration of policy contained in a statute is, like a preamble, not a part of the substantive portions of the act. Such provisions are available for clarification of ambiguous substantive portions of the act, but may not be used to create ambiguity in other substantive provisions." *Illinois Indep. Tel. Ass'n v. Illinois Commerce Comm'n*, 183 Ill. App. 3d 220, 237, 539 N.E.2d 717, 726 (4th Dist. 1988) (citing *Brown v. Kirk*, 64 Ill.2d 144, 355 N.E.2d 12 (1976)). Plaintiffs allege that the Board violated the "spirit of the Open Meetings Act." (Compl. ¶ 23.) No cause of action can be stated for violating the "spirit" of the Open Meetings Act, nor for violating the policy declarations contained in section 1.

Section 2(e) of the Open Meetings Act states, in pertinent part, 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." 5 ILCS 120/2(e). The U.S. District Court for the Northern District of Illinois noted that Illinois courts have not discussed "how specific a public notice must be in order to satisfy" this provision. *Roller v. Bd. of Educ. of Glen Ellyn Sch. Dist. No. 41*, No. 05 C 3638, 2006 WL 200886, at *4 (N.D. Ill. Jan. 18, 2006). However, that court found that where the board members had read the title of the resolution being adopted, the recital requirement was met. *Id.*

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Plaintiffs' Complaint does not provide any facts supporting a violation of section 2(e). It merely restates the statutory requirement and concludes that it was not met. While Plaintiffs fixate

17, 18, 19, 20, 21, 22, 23, 24

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26(B)

on the “substance” of the Disputed Actions, the Open Meetings Act contains no requirement to provide the public with such “substance.” Plaintiffs do not allege that the Board improperly moved to adopt the Disputed Actions or failed to recite the identification of those actions. Indeed, Plaintiffs own Complaint repeatedly states that there was discussion of the Disputed Actions. (Complaint ¶¶ 18, 19 & 21.) This is sufficient to satisfy the requirements of section 2(e) of the Open Meetings Act.

Section 2.06(g) of the Open Meetings Act provides that “[a]ny person shall be permitted an opportunity to address public officials under the rules established and recorded by the public body.” 5 ILCS 120/2.06(g). In *Roxana CUSD*, the only case interpreting this provision, a board was found to have violated section 2.06(g) where its rules only allowed written public commentary and actively denied individuals’ requests to address the board before and during the meeting. *Roxana Cmty. Unit Sch. Dist. No. 1 v. Env’tl. Prot. Agency*, 2013 IL App (4th) 120825, ¶¶ 57–58, 998 N.E.2d 961. Plaintiffs do not allege that any person attempted to address the Board only to be denied that opportunity, nor do they allege that the Board violated its own procedural rules. Plaintiffs have therefore failed to allege any violation of section 2.06(g) of the Open Meetings Act.

To the extent Plaintiffs allege that members of the public “did not have access to copies of the lease rates and revised covenants,” such issues are beyond the scope of the Open Meetings Act. Nothing in the Open Meetings Act or related case law requires the Board to distribute copies of contracts or other documents in advance of a public meeting. Plaintiffs’ allegations that the Open Meetings Act was violated by the failure to provide the “substance” of the Disputed Actions has no basis in the text of the Act. Regardless of Plaintiffs’ interpretation of the “spirit” of the Open Meetings Act, they cannot invent requirements not imposed by the legislature.

Conclusion

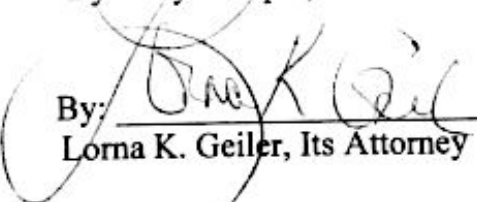
Plaintiffs claim that the Board failed to comply with the Open Meetings Act by posting an inadequate agenda and providing insufficient information to permit public discussion of the Disputed Actions. The Agenda sufficiently describes the nature of the actions taken by the Board. The Board's discussions, even to the limited extent they were described in the Complaint, were sufficient to meet the requirements of the Open Meetings Act. Plaintiffs' Complaint is frivolous and should therefore be dismissed.

For the foregoing reasons, Defendant Clark County Park District Board of Commissioners respectfully requests that this Court dismiss Plaintiffs' Complaint in its entirety and award Defendant fees and costs under 5 ILCS 120/3(d).

Respectfully Submitted:

CLARK COUNTY PARK DISTRICT
BOARD OF COMMISSIONER, Defendant

By: Meyer Capel, A Professional Corporation

By: 
Lorna K. Geiler, Its Attorney

PREPARED BY:

Lorna K. Geiler
Meyer Capel, *A Professional Corporation*
306 West Church Street
P. O. Box 6750
Champaign, IL 61826-6750
Telephone: 217/352-1800
Fax: 217/352-1083
lgeiler@meyercafel.com

CERTIFICATE OF SERVICE BY ATTORNEY

The undersigned attorney hereby certifies that the original of the attached document, namely: *Combined Motion to Dismiss and Supporting Memorandum* was served upon:

Kathy Ramsey
Clark County Circuit Clerk
County Courthouse
501 Archer Ave.
Marshall, IL 62441


And a copy of the same to

Kirk Allen
3894 Coach Rd
Kanas, IL 61933

And

John Kraft
7060 Illinois Highway 1
Paris, IL 61944

by depositing the same in the U.S. Mail at approximately 5:00p.m. at the United States Post Office located at 600 N. Neil St., Champaign, IL 61820, properly addressed and with proper postage affixed thereto this 26th day of February, 2015.



Lorna K. Geiler

PREPARED BY:

Lorna K. Geiler
Meyer Capel
A Professional Corporation
306 West Church Street
P. O. Box 6750
Champaign, IL 61826-6750
Telephone: 217/352-1800
Fax: 217/352-1083
lgeiler@meyercafel.com



**CLARK COUNTY PARK DISTRICT
Regular Monthly Meeting**

Mill Creek Park
20482 N. Park Entrance Rd
Marshall, IL 62441

Tuesday, January 17, 2015
6pm

AGENDA

Order of Business

- I. Call to Order
- II. Roll Call
- III. Approval of Agenda
- IV. Pledge of Allegiance
- V. Public Comment
- VI. New Business
 - a. Approval of Minutes by Consent Agenda
 - i. Regular Board Meeting Minutes January 15, 2015
 - b. Director's Report
 - c. Payment of Bills
 - i. Discussion and Approval to pay a portion of the invoice for B&T Drainage
 - d. Transfer of funds
 - i. Hi-Fi Account to Erosion Account (\$75.00)
 - e. Discussion and Approval to obtain estimates for repair to roads in campground
 - f. Discussion and Approval of Disposal of Equipment
 - i. 2001 Woods Mower (5ft)
 - ii. 1999 Bush hog 2615 Legend
 - iii. 1973 AC 185 Tractor
 - iv. Snowblade
- VII. Old Business
 - a. Community Parks Discussion and Approval of Grants
- VIII. Committee Reports
 - a. Campers Committee
 - b. Master Plan Committee

- IX. Executive Session**
 - a. Pending Litigation
 - b. Discussion of Lease Property, Lease Rates, Revised Covenants
 - c. Personnel

- X. Board approval of Lease Rates**

- XI. Board Approval of Revised Covenants**

- XII. Adjourn**