

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

Elizabeth Markel, Ann Marie Rogers
and Roger Schmidt

Case No. 2014-139227-CZ
Hon. Joe Bowman, Circuit Judge

v.

David Mackley, Colleen Barkham,
Alice Tomboulion and Joseph Peruzzi

Defendants

_____/

John T. Rogers (P19569)
Attorney for Plaintiffs
1025 W. Lincoln Road
Birmingham, MI 48009
(248)722-6128
_____ /

There is no prior or pending case between the parties hereto.

FIRST AMENDED COMPLAINT

Elizabeth Markel, Ann Marie Rogers and Roger Schmidt, Plaintiffs, by their attorney, John T. Rogers, complain of David Mackley, Colleen Barkham, Alice Tomboulion and Joseph Peruzzi, and represent as follows:

JURISDICTION, VENUE AND PARTIES

1. Plaintiff Elizabeth Markel is a resident of Oakland Township, Oakland County, Michigan.

2. Plaintiffs Ann Marie Rogers and Roger Schmidt are residents of Oakland Township, Oakland County, Michigan, and each is a member of the Oakland Township

Parks and Recreation Commission, (hereafter "PRC"), having been elected thereto.

3. Defendants are residents of Oakland Township, Oakland County and each of them is a member of the PRC, having been elected thereto.

4. The PRC is a Public Body, located and operating in Oakland Township, the general purpose and authority of which is to plan, finance, acquire, manage, maintain, conserve, preserve and administer park lands located in and owned by Oakland Township, including establishing policies and making decisions related thereto.

5. The PRC consists of seven (7) members who are elected by the voters residing in Oakland Township for a four (4) year term. Four members of the PRC constitute a quorum for purposes of conducting PRC business and matters of policy.

6. The current Commissioners of the PRC are Defendants David Mackley ("Mackley"), Colleen Barkham ("Barkham") Alice Tomboulion ("Tomboulion") and Joseph Peruzzi ("Peruzzi"). Rounding out the Commission members are Plaintiff Ann Marie Rogers ("Rogers"), Plaintiff Roger Schmidt ("Schmidt") and Andrew Zale ("Zale").

7. In years of membership on the PRC: Defendant Mackley has served as a commissioner continuously since 1982 (31 years); Defendant Barkham continuously since 1988 (25 Years); Defendant Tomboulion continuously since 1992 (21 years); and Defendant Peruzzi since 2000 (13 years). Rogers, Schmidt and Zale are newly elected members, having completed their first year on the Commission.

8. Plaintiffs' Complaint is based on alleged violations of the Open Meetings Act ("OMA" or "the Act"), Public Act No. 267 of 1976, as amended. (MCL 15.261, et seq.) by Defendants as set forth herein.

9. Under the OMA, the Circuit Court has jurisdiction of civil actions alleging

violations of the Act; the venue is the County where the public body serves. MCL 15.271.

10. The PRC, as a public body, is required to act in compliance with the Open Meetings Act.

11. The OMA, among other things, requires all meetings of a public body with a quorum present to discuss a public question or issue, to be open to the public MCL 15.263(3); and that the meeting be held in a place available to the general public and to give public notice of such meetings, MCL 15.265 (1), excepting therefrom certain meetings specified in the Act that are required to be closed to the public under Section 8 of the Act. MCL 15.268 (8). Plaintiffs allege that the meetings complained of herein are not exempt from the public under Section 8 of the Act.

12. Plaintiffs state that the purpose of the OMA is to promote openness and accountability, to protect the public's right to know what is going on in public bodies (in this case, the PRC) by opening to public view the discussions, deliberations and processes by which elected officials make decisions and policy on behalf of the public; and therefore, the Act is interpreted broadly to accomplish the goal.

13. Plaintiffs Rogers and Schmidt, albeit members of the PRC, bring this action as residents of Oakland Township, along with Plaintiff Markel, in order to enforce compliance by Defendants with the requirements of the provisions of the OMA as hereinafter set forth. Plaintiffs say they do not seek in this complaint to invalidate any decisions of the PRC; rather seek herein to stop the Defendants unlawful, secret, closed, non-public meetings with respect to PRC business, to have them conduct same in public to the end the public is aware of Defendants expressions and discussions relating to PRC business.

COUNT 1

14. During the period of time Plaintiffs Schmidt and Rogers have served on the PRC (a little more than a year), Plaintiffs allege that the Defendants, constituting a quorum, have in the main acted in unison at the public meetings of the PRC with respect to matters and items on the agenda, to a point that as time and public meetings passed, it appeared to them that Defendants had discussed, rehearsed and decided these matters together outside the public forum, in closed conferences discussions, deliberations and meetings prior to the public meeting or meetings.

15. On or about November 30, 2013, Plaintiffs' above mentioned surmise was confirmed through electronic communications (emails) brought to their attention by Plaintiff Elizabeth Markel, who had obtained them through the Freedom of Information Act. Plaintiffs say that said emails were mailed by and to the Defendants and to and from the PRC Director Melinda Milos-Dale ("Dale", a/k/a "Mindy") to the Defendants, i.e., one to the other three Defendants and Dale, and back and forth between them, the contents of which involved private communications, discussions and deliberations between the four Defendants regarding PRC business matters and policy.

16. On December 3, 2013, notified of the above information, Plaintiff Rogers says she requested a review of the emails of those of the Defendants, and those of the PRC Director, Mindy (referred to as "Mindy" during the course of public meetings of the PRC). Plaintiffs Rogers and Schmidt state that: (a) the records of emails to and from PRC Commissioners and PRC employees are maintained at the Oakland Township office; (b) the electronic equipment and information system is the property of the Township for it's business use and also the use of the PRC; (c) the records, including the emails, are

Township property, accessible and open to a Commissioner or Commissioners; (d) and such records are open to the public pursuant to the terms of the Freedom of Information Act; and (e) the password allowing access to PRC emails, as an administrative matter, was known only by Mindy, who is subject to the directions of the Commission and also the Supervisor of Oakland Township with respect to the password, access to same and use of the equipment.

17. Upon Plaintiff Rogers' request, as a member of the PRC, to access the PRC records, i.e., the emails covering her actual period of service on the Commission (one year), she says Mindy questioned her right to have access to same and prevented immediate access until days later when she was ordered to do so by the Supervisor of the Township.

18. Rogers states her review of the emails took place at the Oakland Township office on December 5th and 6th, 2013. She states the handling of the review was conducted and controlled remotely by Mindy, the PRC Director. During the course of her review of the PRC records, Rogers says she observed the "In Box" jump from 146 to 139 i.e., 7 emails were deleted in sequence along with other emails without allowing her the opportunity to see them. She says that Mindy was the only one who had the password and controlled the email account. She states that upon completion of the review of the records, an expert "Information Technology Specialist" was employed by the Township to retrieve the deleted emails, including the referenced "in box" numbers, but was unable to do so.

19. Plaintiffs say that the emails involved herein are. public records under the custody of the PRC and Oakland Township, and that the PRC Director had and has no

authority on her own to delete and destroy public records, and that she was specifically instructed by the Oakland Township Supervisor not to delete any emails.

20. Plaintiff Rogers alleges that she found, reviewed and obtained several emails authored and communicated privately between the four Defendants (and Mindy, the PRC Director) mailed on various dates, dealing with PRC business and policy.

21. Plaintiffs say that the above referred private email communications between the four Defendants involved conferences, discussions, "brainstorming" (a word used by one of the Defendants) conducted between them (including the PRC director, Mindy) concerning PRC business and policy, constituted "meetings" or "closed sessions" under Section 2(b) of the Act. MCL 15.262 (b) and (c) and that such meetings were and are in violation of the OMA under Section 3 (3) thereof. MCL 15.263(3).

22. Relevant to this complaint, Plaintiffs say: the OMA defines "a meeting" as the convening of a public body (PRC) at which a quorum is present for the purposes of discussing public policy and issues with a view toward taking action, MCL 15.262(b); and that all such meetings be open to the public, MCL 15.263(3); and that such meeting shall not be held unless public notice is given. The Act also states that a public body (PRC) cannot engage as a "caucus", i.e., to predetermine action in a non-public meeting. MCL15.268(g).

23. Plaintiffs say the above complained of meetings were conducted without giving Notice to the public as required by Section 5(1) of the Act. MCL 15.265(1).

24. Plaintiffs say non-public meetings by Defendants, dealing with PRC business, complained of herein as violations of the OMA, involved various issues, eight in number, which are highlighted in bold print along with the date of such communications and

meetings in Plaintiffs' Exhibit 1, attached hereto. They say the actual emails evidencing such meetings and discussions with respect to said issues are too numerous to attach to this Complaint; nonetheless, limited evidentiary examples of same are set forth in paragraphs 24 and 25 below.

25. Plaintiffs state the Defendants met privately through emails, one to the other, to discuss and reach a combined position by them opposing a claim made by the Oakland Township Board of Trustees that the Township has authority over the "Land Preservation Fund" (a fund derived from millage paid by Oakland Township residents used for acquisition of park land limited to certain uses). Plaintiffs say all of their meetings and discussions relating to the said issue (ownership and control of the Fund), were conducted by Defendants outside the public forum, in secret, without notice to the public, in violation of Sections 2(b), Section 3(3), Section 5 and Section 8(g) of the OMA. MCL 15.262(b); MCL 15.263(3); 15.265; and MCL 15.268 (g). Plaintiffs say evidentiary examples of the emails exchanged and discussed between Defendants referred to herein are attached to Plaintiffs Exhibit 2 annexed hereto.

26. Plaintiffs say that in addition to the above mentioned issue, Defendants met privately and discussed other issues involving PRC business, to develop combined strategy regarding same, one of which was park rezoning of park land, as shown by their communications in Plaintiffs Exhibit 3 annexed hereto.

27. Plaintiffs allege that some of the emails exchanged exclusively between the Defendant Commissioners and Mindy, the PRC Director, included or alluded to information and material received from Mindy and third parties, bearing on issues and matters before or concerning the Commission. They say that the information and material contained in the

emails were part of Defendants' non-public meetings, used and discussed by them in their private deliberations with respect to policy matters, and they claim that such material and information should have been made open to the public by Defendants (and to the other Commissioners), to the end the public is aware of same and the discussions of Defendants relating thereto. They say none of the information and material alluded to and alleged herein or in the above alleged emails were exempted by the Act from the public. They say that Defendants in using the material and information in their private discussions and withholding same from the public (including the other Commissioners) violate Section 3 of the OMA. MCL 15.263(2) and (3).

28. Plaintiffs allege that on one occasion when one of the Defendants (Mackley) failed to make a private meeting with the other Defendants to discuss PRC business, the member was 'scripted' through email from one of the Defendants (Barkham) with information to bring him "up-to-speed" with the other three Defendants on a PRC issue they had discussed previously in private. Plaintiffs allege that the Defendants communicated, discussed and collaborated in private between themselves concerning PRC business and policy prior to public meetings, and on information and belief, they continue to do so, all of which private meetings and discussions are in violation of Section 3 (2) and (3) of the Act. MCL 15.263(2),(3).

29. During June, 2013, Plaintiff Rogers states that in one of the emails obtained by Plaintiff Rogers, the attorney representing the PRC, in answering a question of from a Defendant, gratuitously added he was writing to only two of them to avoid writing to a quorum, intimating that questions and meetings should include less than a quorum, otherwise such must be open to the public. Notwithstanding, the four Defendants continued

to meet together participating in discussions of PRC business. and policy in closed meetings. Plaintiff Rogers and Schmidt state the email mentioned above was not shared with them.

30. On December 11, 2013, during the regular meeting of the PRC, Plaintiff Commissioner Rogers, made aware of what was going on between the Defendants, i.e., closed meetings, charged the Defendants with acting in concert as a "cabal", in closed meetings, dealing, discussing and deliberating with respect to PRC business, in violation of the OMA. Rogers mentioned at the meeting that she had campaigned for a membership on the PRC on the promise that if elected, she would be watchful and diligent to assure that the PRC conducts it's business transparently, in public. In her election to membership, she received the second highest number of votes of the 7 members elected, which reinforced her belief that the Oakland Township public want the PRC to act openly, as does the legislature.

31. At the above mentioned public meeting, Plaintiffs Rogers and Schmidt state that none of the Defendants denied her charges; neither did any of the Defendants admit same. Instead, after Plaintiff Rogers made the charge, Defendant Tombouljian offered a Motion at the meeting that (hereafter) the availability of PRC emails to Commissioners be subject to a prior written request by a Commissioner seeking same, and further that the request be subject to the approval of the Commission (of course, requiring 4 votes).

32 Plaintiffs state that at the public meeting, the above said Motion was tabled. They say that at the next public meeting of the PRC, said Motion was renewed, again by Defendant Tombulian. One of the Defendants was not present at the meeting. The vote taken on the Motion was 3 to 3, with the 3 Defendant Commissioners present voting for

approval of the Motion. Plaintiffs allege and believe that given the Motion and it's timing, it is fair to conclude that Defendants, a PRC quorum, by virtue of the proposed Motion, sought to gain control over a fellow Commissioner's request to review and obtain copies of PRC emails and records, to the end they can carry on their practice of private meetings, outside the view of the public, in violation of the so-called "Sunshine Law", the OMA.

Count II

33. Plaintiffs adopt, allege and incorporate by reference herein paragraphs 1 through 32 of this complaint, the same as if pled hereunder.

34. Plaintiffs say the alleged closed meetings were conducted by Defendants "round robin", back and forth between them (including the Director), meeting and acting in concert as a quorum with respect to PRC business, policies and issues that were up for consideration or would be considered by the PRC, in order for the four of them to pre-determine same prior to the public meetings of the PRC. Plaintiffs say that such action of the Defendants amounted and amounts to carrying on a 'caucus', a conduct prohibited to public bodies, other than the State legislature, which conduct violates Section 8(g) of the Open Meetings Act. MCL15.268(g).

Count III

35. Plaintiffs adopt, allege and incorporate by reference paragraphs 1 through 34 of this Complaint as if fully pled herein under this Count.

36 They allege that the Defendant Commissioners knew and were aware of the Open Meetings Act (in effect since 1977), it's purpose and mandate to make the business of Public Bodies open to the public. Notwithstanding, Defendants, individually and collectively as a quorum team, composed of long term public officials and members of the

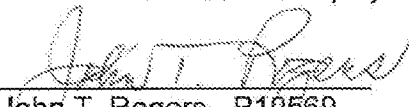
PRC, through their above alleged acts of engaging continuously in closed meetings dealing with PRC business and policy, knowingly and intentionally violated the OMA, as set forth in this Complaint, and in the process and without notice to the public, impaired the public's right to know of same, to be present at such meetings, to know of the discussions. Plaintiffs say therefore that each is personally liable to the Plaintiffs, as members of the public, for such violations. Plaintiffs claim relief under Section 11 (4) of the Act. MCL 15.271(4), i.e., reimbursement of actual attorney fees and court costs for conducting closed meetings, and based on the above stated conduct, Plaintiffs also claim actual and exemplary damages, to the limit of the law, against each of the Defendants pursuant to Section 13(1) of the Act. MCL 15.273(1).

As a general allegation, applying to all Counts of this Complaint, and based on the sum of the foregoing allegations, Plaintiffs say that each of the Defendants having been members of the PRC for so many consecutive years, as previously set forth, that the four of them, as a quorum, apparently believe they are entitled to conduct PRC business and policy matters together as they please, including participating privately in closed meetings concerning same, irrespective of the Open Meetings Act, and that they can do so with impunity. Plaintiffs also say that it is obvious from a review of Plaintiffs' exhibits that the PRC Director Mindy shared and continues to share this belief, i.e., her emails concerning PRC business were routinely directed only to the four Defendants, presumably believing the remaining members of the Commission are furniture, i.e., they do not count. Plaintiffs claim that the alleged conduct of Defendants, in their meetings together outside the public forum has gone on sufficiently in time to constitute a course of conduct by them, and also with the Director (Mindy). They say further that it is incumbent that Defendants come out of the closet, go public and stop their closed meetings, to the end the public is made knowledgeable of what is going on with the PRC and it's business, which is the purpose and goal of the OMA and this Complaint. Plaintiffs say that unless an injunctive order issue enjoining Defendants' alleged conduct, they will continue their closed meetings and in doing

so have caused irreparable injury to the public they serve.

Wherefore, Plaintiffs request the Court to grant declaratory, injunctive and monetary relief, as follows:

- (1) The Court find and declare under Count I that Defendants have held closed meetings concerning business of the PRC, prohibited by the Open Meetings Act, and thereby have violated Section 3(3) of the Act, MCL 15.263(3);
- (2) The Court find and declare under Count II, that the Defendants acted and carried on the business of the PRC in private as a "caucus", which is unauthorized by and in violation of Section 8(g) of the Act, MCL 15.268(g);
- (3) The Court find and declare that Defendants, in carrying on continuous and multiple closed meetings together, as a quorum, concerning PRC business and policy, have intentionally violated the OMA, and therefore under Section 13 of the Act, each of them is personally liable to Plaintiffs, as members of the public, for actual and exemplary damages, to the limit of the applicable law. MCL 15.273(1).
- (4) The Court enter an Order requiring Defendants, personally and as four commissioners of the of the PRC, a public body, acting together as a quorum to comply with the terms of the OMA ;and enjoin them from the practice of private, closed meetings between them involving business of the PRC, unless the meeting is exempted from the public and entitled to be closed under the provisions of Section 8 of the Act, MCL 15.268.
- (5) Award and assess Defendants actual attorney fees incurred by Plaintiffs in bringing this action, and court costs, as provided under Section 11(4) of the Act, MCL 15.271(4);
- (6) Grant such other and further relief consistent with the facts and equity.


John T. Rogers P19569
Attorney for Plaintiffs
1025 W. Lincoln
Birmingham, MI 48009
(248) 722-6128

Dated: March 7, 2014

PLAINTIFFS' EXHIBIT 2

PLAINTIFFS' EXHIBIT 3

Received for Filing Oakland County Clerk 2014 MAR 07 PM 04:19

Plaintiff's Exhibit 1

Oakland Township PRC Issues Discussed by Defendants in Closed Meetings

Land Preservation Millage Administration (Park Commission v Board of Trustees)

4/4/2013 Barkham to Mackley, Dale, Tomboulion, Peruzzi
4/6/2013 Mackley to Barkham, Peruzzi, Tomboulion , Dale
4/6/2013 Barkham to Mackley Peruzzi, Tomboulion, Dale
4/6/2013 Mackley to Barkham, Peruzzi, Tomboulion (), Dale
4/6/2013 Barkham to Dale, Mackley, Peruzzi, Tomboulion
4/6/2013 Mackley To Barkham, Peruzzi, Tomboulion, Dale
4/12/2013 Barkham to Dale, Mackley, Tomboulion, Peruzzi
4/12/2013 Mackley to Barkham, Dale, Tomboulion, Peruzzi
4/17/2013 Mackley to Dale, Peruzzi, Barkham, Tomboulion
4/17/2013 Barkham to Mackley, Dale, Peruzzi, Tomboulion
4/20/2013 Barkham to Peruzzi, Mackley, Dale, Tomboulion
4/20/2013 Mackley to Peruzzi, Tomboulion, Barkham, Dale, Joppich (PRC Attorney)
5/9/2013 Dale to Barkham, Tomboulion, Peruzzi, Mackley
5/10/2013 Perruzzi responds to 5/9 email
6/26/2013 Dale to Mackley, Tomboulion, Barkham, Peruzzi
6/26/2013 Barkham to Dale, Mackley, Tomboulion, Peuzzi, Joppich
6/27/2013 Peruzzi to Dale, Mackley, Barkham, Peruzzi, Joppich
6/27/2013 Tomboulion to Dale, Mackley, Barkahm, Peruzzi, Joppich

PRC Position Statement to Board of Trustees Re: Administration of Land Preservation Millage

4/20/2013 Dale to Mackley, Peruzzi, Barkham, Tomboulion
4/21/2013 Mackley to Dale, Peruzzi, Barkham, Tomboulion
4/21/2013 Barkham to Mackley, Dale, Peruzzi, Tomboulion
5/9/2013 Dale to Barkham, Tomboulion, Peruzzi, Mackley
5/10/2013 Peruzzi responds

Hiring Stewardship Manager (Salary paid from Land Preservation Millage)

4/6/2013 Dale to Mackley, Tomboulion, Barkham, Peruzzi
4/8/2013 Tomboulion to Mackley, Dale
4/15/2013 Peruzzi to Dale, Mackley, Barkham, Tomboulion
4/15/2013 Tomboulion to Peruzzi, Mackley, Barkham, Dale

PRC Legal Representation (Township Attorney or exclusive for PRC)

4/19/2013 Mackley to Dale, Tombouliau, Barkham, Peruzzi
4/19/2013 Peruzzi to Mackley, Dale, Tombouliau, Barkham
4/19/2013 Mackley to Peruzzi, Dale, Tombouliau, Barkham
4/20/2013 Barkham to Peruzzi, Mackley, Dale, Tombouliau
4/20/2013 Peruzzi to Barkham, Mackley, Dale, Tombouliau

Employer of Parks Staff- PRC or Township Board

3/29/2013 Tombouliau to Mackley, Peruzzi, Barkham, Dale
4/12/2013 Dale to Barkham, Tombouliau, Peruzzi, Mackley
4/15/2013 Peruzzi to Dale, Mackley, Tombouliau, Barkham
4/15/2013 Tombouliau to Peruzzi, Mackley, Barkham, Dale
4/15/2013 Barkham to Tombouliau, Peruzzi, Mackley, Dale, Joppich

Marshview Connector Parking Lot

5/21/2013 Mackley to Tombouliau, Barkham, Peruzzi, Dale
5/21/2013 Tombouliau to Mackley, Barkham, Peruzzi, Dale
6/22/2013 Mackley to Dale, Peruzzi, Barkham, Tombouliau
6/23/2013 Barkham to Mackley, Dale, Peruzzi, Tombouliau
6/24/2013 Dale to Barkham, Mackley, Peruzzi, Tombouliau

Rezoning Parks from Residential to Recreation

9/26/2013 Barkham to Mackley, Peruzzi, Tombouliau
9/27/2013 Mackley to Peruzzi, Barkham, Tombouliau, Dale
9/27/2013 Peruzzi responds to Mackley, Barkham, Tombouliau, Dale
9/27/2013 Tombouliau responds
9/27/2013 Peruzzi to Mackley, Barkham, Tombouliau
9/27/2013 Dale to Mackley, Tombouliau, Barkham, Peruzzi, Joppich
9/30/2013 Tombouliau to Dale, Mackley, Peruzzi, Barkham, Joppich

Meeting Procedures

7/9/2013 Dale to Zale, Barkham, Peruzzi, Mackley
7/9/2013 Barkham to Dale, Peruzzi, Zale, Mackley
7/10/2013 Zale to Barkham, Dale, Peruzzi, Mackley
9/20/2013 Dale to Zale, Barkham, Peruzzi, Mackley
9/20/2013 Zale to Dale, Barkham, Peruzzi, Mackley
10/10/2013 Peruzzi to Zale, Barkham, Dale, Mackley
10/10/2013 Zale to Peruzzi, Barkham, Dale, Mackley
12/5/2013 Peruzzi to Zale, Barkham

PLAINTIFFS' EXHIBIT 2

From: dmackley08@comcast.net
Sent: Saturday, April 06, 2013 11:54 AM
To: Colleen Barkham
Cc: Joe Peruzzi; Alice Tomboulia; mnbenez@q.com; Mindy Milos-Dale
Subject: Re: BOT Mtg on Tuesday

Since I responded to the email from Jim (Gonser), I should read the letter to start the questions.

Dave

From: Colleen Barkham [ths barkham@hotmail.com]
Sent: Thursday, April 04, 2013 10:23 AM
To: Dave Mackley; Mindy Milos-Dale; Alice Tomboulia; Joe Peruzzi
Subject: LP Millage Letter Clarification

Dave, I've had some communication with Craig Blust and he is also shocked by this move to take over the LP Millage. He suggests that only Gonser is behind this, that the entire board hasn't agreed. Certainly they know about it, just haven't discussed in public meeting!!

Craig thinks Gonser is trying to point out that the BOT oversees/controls our expenditures. Perhaps you need to talk with Jim and then Gonser to clarify what his intent was with this directive. It does say they want oversight on park management and assets. So what does that mean?

I've got emails out and more to be done which will ask people to come to the BOT meeting next Tuesday. I sure don't want them showing up only to be told this was no big deal. That all the BOT wanted to do was clarify our position in managing millage funds. That would make us look stupid!!

Please make some phone calls and see what they say. Tape record calls or do speaker phone with some else there?

Colleen

From: Colleen Barkham [ths barkham@hotmail.com]
Sent: Saturday, April 06, 2013 1:09 PM
To: Dave Mackley
Cc: Joe Peruzzi; Alice Tomboulia; mnbenez@q.com; Mindy Milos-Dale
Subject: RE: BOT Mtg on Tuesday

That was my original thought! Read it and ask for an explanation!

I will make copies to hand out!

Date: Sat, 6 Apr 2013 15:54:02 +0000
From: dmackley08@comcast.net
To: thsbarkham@hotmail.com
CC: japeruzzi@aol.com; tombouli@oakland.edu; mnbenez@q.com; mmdale@oaklandtownship.org
Subject: Re: BOT Mtg on Tuesday

Since I responded to the email from Jim (Gonser), I should read the letter to start the questions.

Dave

Received for Filing Oakland County Clerk 2014 MAR 07 PM 04:19

From: dmackley08@comcast.net
Sent: Saturday, April 06, 2013 2:56 PM
To: Colleen Barkham; Joe Peruzzi; Joe Peruzzi; mnbenz@q.com; Mindy Milos-Dale
Subject: Tuesday BOT Meeting Thoughts

Tuesday BOT Meeting

Comments??

Dave

Read Jim's memo. How do you explain this?

Public Act 157 states " The Township park commission shall have authority to acquire, maintain, manage, and control township parks and places of recreation".

Colleen ?

In May of 2001 the Park Commission requested the Board of Trustees to set a special election for a Land Preservation millage which was approved unanimously by the Board at their May 16 meeting.

The purpose of the millage is to provide funds for the acquisition of land, improvement of natural habitat, management of the land and the preservation of open spaces.

This millage was approved by the residents at that time and has been reapproved since

Several Park properties have been purchased by combining this money with DNR grants. Purchases follow a thorough evaluation by the Park Commission. We now have over 1100 acres of Park land and open spaces which Chairman Gonser bragged about at a recent area meeting.

To quote your party, we have been very fiscally responsible and have never exceeded the citizen approved budget monies. In fact there is usually a slight surplus at the end of the budget year.

The Park Commission has managed this fund since its approval in 2001 and does not understand why you are considering a change.

From: Colleen Barkham [ths barkham@hotmail.com]
Sent: Saturday, April 06, 2013 7:02 PM
To: Mindy Milos-Dale
Cc: Dave Mackley; Joe Peruzzi; Alice Tomboulia
Subject: Sharing LP Millage email

Mindy, The email received on April 1st was not labeled confidential. Is there any reason we can't share this with the public? I would like to attach this and our millage wording to my email to park supporters.

Anyone have a concern?

Colleen

From: dmackley08@comcast.net
Sent: Saturday, April 06, 2013 10:00 PM
To: Colleen Barkham
Cc: Joe Peruzzi; Alice Tomboulia; Mindy Milos-Dale
Subject: Re: Sharing LP Millage email

We received a memo not email from Jim concerning the Board taking over the Land Preservation fund.

I wonder now after our response to the memo that by talking with Gonser on Monday we are indicating that we agree with the takeover. He seems to want to know what he would do to maintain stewardship at the level we were without a full time stewardship manager.

Dave

From: Colleen Barkham [ths barkham@hotmail.com]
Sent: Wednesday, April 10, 2013 12:43 AM
To: Alice Tomboulia; Dave Mackley; Mindy Milos-Dale
Subject: LP Millage reply

All, Did you notice the comment by Kelly that he hasn't read the Land Preservation Millage? Does that mean that Gonser and BOT has made this decision without the attorney?

Should we send all of our research and Steve's reply to Kelly and ask for his opinion?

We definitely need to set up another meeting with Gonser, Langlois and Reilly. Maybe Jim? Time to discuss this LP millage issue!

Colleen

From: Colleen Barkham [ths barkham@hotmail.com]
Sent: Friday, April 12, 2013 9:09 AM
To: Mindy Milos-Dale; Dave Mackley; Alice Tomboulia; Joe Peruzzi
Subject: LP Millage

I have looked at all BOT available agendas and minutes. I can find no comment or discussion by this board about the LP millage.

Anyone aware of any agenda item or discussion at these meetings?

Colleen

From: dmackley08@comcast.net
Sent: Friday, April 12, 2013 9:29 AM
To: Colleen Barkham
Cc: Mindy Milos-Dale; Alice Tomboulia; Joe Peruzzi
Subject: Re: LP Millage

None that I know of.

Dave

From: Joseph Peruzzi [j.peruzzi@clintontownship-mi.gov]
Sent: Monday, April 15, 2013 9:08 AM
To: Mindy Milos-Dale; Colleen Barkham; tombouli@oakland.edu; dmackley08@comcast.net
Subject: RE: Information for You

Well...I don't think there could be any misunderstanding of Jim being the supervisor these days. Our previous resolution affirming Jim's role in personnel conflict issues was a result of the many people issues we faced in the department last year that finally resulted in some conflict resolution meetings. He still has that role, I suppose. I am not sure pitting the MTA and MRPA into this battle is productive. Ann Marie citing the MTA is no doubt based on a biased question. Here is how I view the personnel subcommittee issue in regards to the stewardship hire.

Roger took my place on the subcommittee because I felt it necessary that some of the new commissioners be given spots on all of these subcommittees.

Roger then decided to withdraw his participation on the most important personnel issue that faced the commission because he did not agree with the need to hire a stewardship manager. That was too bad since as a member of the full commission I would have appreciated his input not only on the qualities of the candidates, but also his input on why we should not make the hire.

When Roger withdrew Dave stepped in to fill out the committee to get the work done. We all knew that including Ann Marie since it was announced at the meeting, and I heard no objections.

At a subsequent meeting Ann Marie said she was not informed of the fact that Dave was now on that committee, and she took umbrage at that. When she was then asked to participate, she did not show up at the time that she had agreed to. This all sounds like a game more than serious consideration of issues.

Someone correct me if I am wrong about how I see this, because this is how I plan to frame the entire topic should it come up, but I want to make sure I totally understand what is going on.

Joseph Peruzzi

From: Mindy Milos-Dale [mailto:mmdale@oaklandtownship.org]
Sent: Friday, April 12, 2013 5:32 PM
To: Colleen Barkham; Alice Tomboulia (tombouli@oakland.edu); Joseph Peruzzi; dmackley08@comcast.net
Subject: RE: Information for You

Also – the MTA will be advocating for the Board of Trustees. I believe that MRPA would be our advocates.

From: Mindy Milos-Dale
Sent: Friday, April 12, 2013 5:16 PM
To: 'Colleen Barkham'; 'Alice Tomboulia (tombouli@oakland.edu)'; j.peruzzi@clintontownship-mi.gov; 'dmackley08@comcast.net'
Subject: RE: Information for You

Here is the link for the act that governs Mi charter townships:

<http://www.legislature.mi.gov/documents/mcl/pdf/mcl-act-359-of-1947.pdf>

Superintendent information is in there too.

Date: Wed, 17 Apr 2013 17:34:30 +0000

From: dmackley08@comcast.net

To: mmdale@oaklandtownship.org; j.peruzzi@clintontownship-mi.gov; japeruzzi@aol.com;

THSBarkham@hotmail.com; tombouli@oakland.edu

Subject: Memo to Gonser

I think we need to send a memo such as this to Gonser, and expecially Kelly, after the article hits the Oakland Press Sunday. To force the issue one way or another.

Dave

From: Colleen Barkham [thsbarkham@hotmail.com]
Sent: Wednesday, April 17, 2013 9:44 PM
To: Dave Mackley; Mindy Milos-Dale; Joe Peruzzi; Joe Peruzzi; Alice Tomboulia
Subject: RE: Memo to Gonser

Yes, this is probably necessary, but it doesn't ask for a response. Perhaps end it with a request to meet and discuss?

I think they will have more reason to meet with us after the next board meeting. Perhaps you should wait until closer to that date to send this memo?

It will be interesting to see if you get a "memo" after Sunday!

Colleen

From: dmackley08@comcast.net
Sent: Friday, April 19, 2013 9:01 PM
To: Mindy Milos-Dale; Alice Tomboulia; Colleen Barkham; Joe Peruzzi; Joe Peruzzi
Subject: Fwd: Parks Legal Opinion
Attachments: Parks Legal Opinion

Is this what we are to approve at the next meeting? Did it go out in the packet? I did not receive mine today. If it was received by some today, we know where he got the information.

From: Joseph Peruzzi [japeruzzi@aol.com]
Sent: Friday, April 19, 2013 9:40 PM
To: dmackley08@comcast.net
Cc: Mindy Milos-Dale; Alice Tomboulia; Colleen Barkham; Joe Peruzzi
Subject: Re: Parks Legal Opinion

When did we decide to have legal work conducted by the us approved by the bot on a case by case basis. Last I heard we approved the retention of joppich as our legal counsel. It was the board that took on a new law firm.

We just kept ours. In any event, Steve's work on all of this is just a continuation of the work we started prior to the approval of the new budget, and I would hope that this continues. Kelly will have to offer up a legal opinion to the contrary. I think gonzer is just trying to bully the parks commission into submission.

Sent from my iPad

On Apr 19, 2013, at 9:00 PM, dmackley08@comcast.net wrote:

Is this what we are to approve at the next meeting? Did it go out in the packet? I did not receive mine today. If it was received by some today, we know where he got the information.

Received for Filing Oakland County Clerk 2014 MAR 07 PM 04:19

From: dmackley08@comcast.net
Sent: Sunday, April 21, 2013 7:49 AM
To: Mindy Milos-Dale
Cc: Joe Peruzzi; THSBarkham@Hotmail.com; tombouli@oakland.edu; Joe Peruzzi
Subject: Re: Draft Communication to Board

In order to discuss this at the meeting, I think we need to send copies to the rest of the Commission so that they will have the info prior to the meeting. Rather than read it all I would like to give a brief history that the citizens present would understand and then read Jim's memo to me (apparently from Gonser) and my response that as not been acknowledged. Then discussion and a motion to send it to the BOT and Dan Kelly. One of you can make the motion and second and I assume the vote would be 4-3 or 5-2.

I realize that Gonser would no doubt receive a copy thru this and probably show up at the Lost Lake meeting.

Thoughts?

As far as the memo on budgeted attorney fees, how or when is that going to be sent to the BOT? Again the rest of the Commission should be aware especially since a motion made by two of them is referred to. Or are still sending the memo?

Dave

Date: Sun, 21 Apr 2013 11:48:54 +0000
From: dmackley08@comcast.net
To: mmdale@oaklandtownship.org
CC: j.peruzzi@clintontownship-mi.gov; THSBarkham@Hotmail.com; tombouli@oakland.edu; japeruzzi@aol.com
Subject: Re: Draft Communication to Board

In order to discuss this at the meeting, I think we need to send copies to the rest of the Commission so that they will have the info prior to the meeting. Rather than read it all I would like to give a brief history that the citizens present would understand and then read Jim's memo to me (apparently from Gonser) and my response that as not been acknowledged. Then discussion and a motion to send it to the BOT and Dan Kelly. One of you can make the motion and second and I assume the vote would be 4-3 or 5-2.

I realize that Gonser would no doubt receive a copy thru this and probably show up at the Lost Lake meeting.

Thoughts?

As far as the memo on budgeted attorney fees, how or when is that going to be sent to the BOT? Again the rest of the Commission should be aware especially since a motion made by two of them is referred to. Or are still sending the memo?

Dave

From: dmackley08@comcast.net
Sent: Friday, April 19, 2013 11:35 PM
To: Joseph Peruzzi
Cc: Mindy Milos-Dale; Alice Tomboulia; Colleen Barkham; Joe Peruzzi
Subject: Re: Parks Legal Opinion

I agree with Joe. We need to make sure that a copy of the opinion is sent to Kelly as I am not sure Gonser would pass it on

Received for Filing Oakland County Clerk 2014 MAR 07 PM 04:19

From: Joseph Peruzzi [j.peruzzi@clintontownship-mi.gov]
Sent: Friday, May 10, 2013 8:47 AM
To: Mindy Milos-Dale
Subject: RE: PRC Response Concerning Takeover of Land Preservation Millage

Sounds fine to me. I will be interested in their response, if any.

Joseph Peruzzi

Charter Township of Clinton
40700 Romeo Plank
Clinton Township, MI 48038
586-615-1106

From: Mindy Milos-Dale [mailto:mmdale@oaklandtownship.org]
Sent: Thursday, May 09, 2013 5:07 PM
To: 'Colleen Barkham'; 'Alice Tomboulia'; Joseph Peruzzi; dmackley08@comcast.net
Subject: PRC Response Concerning Takeover of Land Preservation Millage

Here is Dave's memo for your review.

From: Mindy Milos-Dale [mailto:mmdale@oaklandtownship.org]

Sent: Wednesday, June 26, 2013 5:35 PM

To: dmackley08@comcast.net; tombouli@oakland.edu; Colleen Barkham; Joseph Peruzzi; Steve Joppich (sjoppich@jrsjlaw.com)

Subject: FW: Land Pres Invoices

Commissioners and Steve –

Apparently Jamie Moore (in clerk's department) has been told that the Board of Trustees is now approving land preservation invoices instead of the Parks and Recreation Commission. Please see email thread below.

I would recommend that this discussion item be included on the agenda for whatever joint meeting Dave Mackley is attempting to coordinate with BOT members. In the meantime, can someone tell me what I should tell Jamie?

Thank you,

Mindy

From: Mindy Milos-Dale
Sent: Wednesday, June 26, 2013 6:16 PM
To: Colleen Barkham; Dave Mackley; Alice Tomboulia; Joe Peruzzi; Steve Joppich (sjoppich@jrsjlaw.com)
Subject: RE: Land Pres Invoices

Colleen,

I can only believe that this goes back to the April 1, 2013 memo from Jim Creech that the BOT is taking over the LP millage. I guess they assume that the PRC will just turn all land preservation items over to the BOT.

Mindy

From: Colleen Barkham [mailto:thsbarkham@hotmail.com]
Sent: Wednesday, June 26, 2013 6:18 PM
To: Mindy Milos-Dale; Dave Mackley; Alice Tomboulia; Joe Peruzzi; Steve Joppich (sjoppich@jrsjlaw.com)
Subject: RE: Land Pres Invoices

How can they approve invoices when they are not involved in our work? This makes no sense! Imagine the questions and time spent at a BOT meeting on this! Maybe we have reached the point of needing an answer to these ongoing issues!

I don't know what to tell Jamie.

Colleen

From: Joseph Peruzzi [j.peruzzi@clintontownship-mi.gov]
Sent: Thursday, June 27, 2013 8:47 AM
To: Mindy Milos-Dale; dmackley08@comcast.net; tombouli@oakland.edu; Colleen Barkham; sjoppich@jrsjlaw.com
Subject: RE: Land Pres Invoices

Of course this goes back to the fact the BOT took over land preservation funds. Parks Commission is slowly being decommissioned. I would get something in writing from the BOT, Gonzer, Creech or whoever is in charge and go from there. Whether they will want to provide written direction in this matter is questionable since so many other things have been done without true transparency...there is that word again.

Joseph Peruzzi

Charter Township of Clinton
 40700 Romeo Plank
 Clinton Township, MI 48038
 586-615-1106

PLAINTIFFS' EXHIBIT 3

From: dmackley08@comcast.net
Sent: Friday, September 27, 2013 12:33 PM
To: Japeruzzi@aol.com
Cc: thsbarkham@hotmail.com; tombouli@oakland.edu; Mindy Milos-Dale
Subject: Re: Prep for next BoT

Wasn't Bear Creek Park rezoned prior to our development there. I did not think that the rezoning would preclude any recreation development.

Dave

From: Joseph Peruzzi [japeruzzi@aol.com]
Sent: Friday, September 27, 2013 12:46 PM
To: dmackley08@comcast.net
Cc: thsbarkham@hotmail.com; tombouli@oakland.edu; Mindy Milos-Dale
Subject: Re: Prep for next BoT

Well Mindy can answer that. Bear creek may have a conservation easement over parts of the property, but don't know if the entire park is zoned conservation. Anyone

From: Alice Tombouloulian [tombouli@oakland.edu]
Sent: Friday, September 27, 2013 2:41 PM
To: Mindy Milos-Dale
Subject: Fwd: Prep for next BoT

Mindy - We all need to be clear on the uses allowed in R-C, and that we have been enabled to go ahead with appropriate recreation development after the rezoning has occurred.

Alice

Begin forwarded message:

If you need a third commissioners I can be there at around 4:30. If you have three already, just let me know. I suspect the rezoning to conservation of our parklands will be blocked by indicating this would preclude active recreation at any of the sites. It also might preclude the bot from participating in future development projects. I feel those are the two major issues the bot will have with the rezoning and they are waiting till this next meeting to disclose those objections and then vote the rezoning down. I may be wrong but that is how I see it.

In a message dated 9/26/2013 1:44:11 P.M. Eastern Daylight Time, thsbarkham@hotmail.com writes:

Would any of you be able to meet on Monday, Sept. 30 to brainstorm in preparation for the BoT meeting the following Tuesday? I could meet in the afternoon, any time. I think we could include Mindy and meet at PCCM.

Colleen

=

From: Alice Tomboulia [tombouli@oakland.edu]
Sent: Monday, September 30, 2013 12:23 AM
To: Mindy Milos-Dale
Cc: dmackley08@comcast.net; j.peruzzi@clintontownship-mi.gov; thsbarkham@hotmail.com; Steve Joppich (sjoppich@jrsjlaw.com)
Subject: Re: Park Zoning

Just for the record, after reading the Orion Township Rec-2 Zoning regulations, as suggested by Bob Yager, it appears to me that these requirements are tailored for a private recreational facility, in a similar fashion as other private development and construction is regulated.

This doesn't line up with the Oakland Township Parks, which are publicly owned. Furthermore, Oakland has a separately elected Parks and Recreation Commission which is entrusted and empowered by the electorate, according to statute, to manage and develop the Township parks.

This doesn't mean that our PRC just follows their own opinions and wishes in planning park uses and developments. The Commissioners take seriously the responsibility delegated to the PRC. The OT PRC has a great track record of seeking public input in many ways, and following that input as fully as feasible.

Subsequently, in creating detailed plans for our parks, the PRC utilizes not only the in-house talents of our staff, but also the expertise and advice of a wide variety of qualified consultants who are selected following proper procedures.

Nevertheless, I can see that there are possibilities for additional involvement by other Oakland Township governmental bodies in the various steps of planning parks. This could be considered for the purpose of gaining additional expertise and advice and for creating even greater openness in the operations of the Parks Commission and Parks Department. However, I would not support turning over the PRC's responsibility for final decision-making to another entity.

Alice

On Sep 27, 2013, at 5:16 PM, Mindy Milos-Dale wrote:

Commissioners and Steve –

Please read this email starting at the bottom.

Mindy
