

CHARTER TOWNSHIP OF OAKLAND PARKS AND RECREATION COMMISSION  
CHARTER TOWNSHIP OF OAKLAND BOARD OF TRUSTEES  
SPECIAL MEETING

\*\*\*APPROVED \*\*\*

April 28, 2015

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The April 28, 2015, special joint meeting of the Charter Township of Oakland Parks and Recreation Commission (hereinafter "PRC") and Board of Trustees was called to order at 6:14 p.m. in the Oakland Township Hall.

Parks and Recreation Commission:

PRESENT: Andy Zale, Chairperson  
Alice Tomboulion, Vice-Chairperson  
Roger Schmidt, Treasurer  
David Mackley, Commissioner  
Joseph Peruzzi, Commissioner  
Ann Marie Rogers, Commissioner

Melinda Milos-Dale, Director  
Steven P. Joppich, Attorney

ABSENT: Colleen Barkham, Secretary

A quorum was present.

Board of Trustees:

PRESENT: Terry Gonser, Supervisor  
Karen Reilly, Clerk  
Jeanne Langlois, Treasurer  
Michael Bailey, Trustee  
Robin Buxar, Trustee  
John Giannangeli, Trustee

Warren Brown, Township Manager  
Dan Kelly, Attorney

ABSENT: None

A quorum was present.

**PLEDGE OF ALLEGIANCE**

Chairman Zale led the Commissioners, Board, staff and those present in the Pledge of Allegiance to the flag of the United States of America.

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**AMENDMENT TO AND APPROVAL OF AGENDA**

MOVED BY BUXAR, SECONDED BY BAILEY, on behalf of the Board of Trustees, to approve the agenda as presented.

MOTION CARRIED UNANIMOUSLY.

MOVED BY PERUZZI, SECONDED BY SCHMIDT on behalf of the Parks and Recreation Commission, to approve the agenda as presented.

MOTION CARRIED.

**CITIZENS**

Resident John Markel questioned whether the role of the attorneys is to set policy or give advice.

**CONFIDENTIAL AND PRIVILEGED RECORDS OF OAKLAND TOWNSHIP  
PARKS AND RECREATION COMMISSION AND BOARD OF TRUSTEES**

PRC Chairman Zale stated that, prior to this joint meeting, the Parks and Recreation Commission (hereinafter "PRC") and Board of Trustees each held a closed session with their respective attorneys to discuss this matter. He hopes that at this joint meeting, the two boards will come together and be unified on a plan of action to move forward.

Attorney Kelly first spoke on behalf of the Board of Trustees. Mr. Kelly stated that the Board of Trustees directed him through their motion of March 24, 2015. That motion was "to direct the Oakland Township Manager to secure all confidential communications and e-mails, including all communications and e-mails pertaining to Closed Sessions, and all Attorney/Client-privileged communications and emails, by and between the OT Board of Trustees and the OT Parks and Recreation Commission for review by the OT Attorney. To authorize the OT Manager to retain the IT Consultant, I.T. RIGHT, for assistance if necessary. To authorize the OT Attorney to work with the OT Parks and Recreation Attorney if necessary."

In response to that motion, Mr. Kelly explained that he contacted the Township's information technology provider, IT Right, on March 26th, and shared a copy of the Board's motion. He also contacted the PRC's attorney, Steven Joppich, and their labor attorney, Greg Schultz. They held a conference call with IT Right and together determined the scope of the searches that IT Right was to perform.

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Mr. Kelly continued that, on or about April 3<sup>rd</sup>, he received the results of the email search. Mr. Joppich also received these. Upon review, Mr. Kelly determined that there were seven emails that fit within the category of the Board's motion. He summarized those emails this evening.

PRC Attorney Joppich next spoke. He concurred with the events described by Attorney Kelly. Attorney Joppich summarized the 10 emails in which he felt confidential and privileged attorney-client communications between the PRC and its attorneys appear to have been disclosed to those who are not members or staff of the PRC.

PRC Commissioner Peruzzi questioned how common it is for attorney-client privileged information to be shared with others beyond the intended recipients. Attorney Kelly responded that this is not supposed to happen, stating that this information is supposed to stay with the boards to whom the opinions were sent. However, he acknowledged that this does sometimes happen.

Trustee Buxar asked the Township Manager and Mr. Kelly if anyone from the PRC or Board contacted IT Right after the March 24<sup>th</sup> motion to secure communications. If so, she asked for details regarding who it was and what their purpose was. Attorney Kelly responded that Supervisor Gonser contacted IT Right following the March 24<sup>th</sup> motion, inquiring about whether anyone else had asked them for information prior to March 24<sup>th</sup>. Attorney Kelly said he believes Trustees Thalmann also contacted IT Right after the March 24<sup>th</sup> motion; he subsequently spoke with her and advised that this was not appropriate for her to do.

Trustee Buxar said all contact with IT Right is to be done through the Township Manager, pursuant to Ordinance 97. Attorney Kelly pointed out that, in this case, the requests were to be done by the attorneys as directed by the Board. Township Manager Brown added that he immediately advised IT Right of this once he became aware of this activity.

Supervisor Gonser stated that he has the right to conduct investigations, he will continue to conduct investigations as he deems necessary, and this inquiry to IT Right was a part of his investigation, which he has not yet completed. Treasurer Langlois questioned if Supervisor Gonser had the authority to make these inquiries when the Board of Trustees had directed that this was to be done by the attorneys. Attorney Kelly shared that IT Right has conveyed their concerns to him regarding whom they should be responding to.

PRC Chairman Zale suggested that the Board discuss this in further detail at their meeting later this evening.

PRC Commissioner Peruzzi asked the attorneys if communications between an attorney and their client are privileged. Attorney Joppich responded that unless a communication is for a purpose such as scheduling and does not include any attorney-type business, the

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communication is privileged, regardless of whether or not the communication contains an “attorney-client privileged” stamp on it. Attorney Kelly concurred with this.

Attorney Joppich said all of the emails that he reviewed earlier this evening contained attorney-client privileged communications (although there was one email that did not include a recipient, so he did not know if this email was ever actually sent, and there was a second email that included a policy manual and he did not know if this would constitute a privileged correspondence). Attorney Kelly said that one of the emails he reviewed this evening was from Attorney Schultz and did not include a “privileged and confidential” stamp, although it was to Chairperson Zale.

Commissioner Peruzzi also inquired if the correspondence is no longer privileged if it is transmitted via email. Attorney Joppich said that email is a recognized means of communication, and the attorney-client privilege is not lost because it was sent via email. Further, the privilege is not lost when one person discloses the information. The only way to waive that privilege is if the PRC takes an action (by motion) to do so. Attorney Kelly concurred.

PRC Vice-Chairperson Tombouljian stated that when an elected official receives a document marked as confidential and privileged information, it is understood between all the members of that body that each member is expected and supposed to keep that document confidential. There is trust between the members that they understand that and respect it. That is not what we have seen here, and there is a lack of process going on.

MOVED BY BUXAR, SECONDED BY LANGLOIS, to have the Township Attorney work with the Township Manager to have the report memo prepared by the Township Attorney, dated April 28, 2015, made available for immediate release to the public.

Discussion on Motion:

Trustee Buxar clarified that she is referring to the list of email correspondences summarized by the Township Attorney earlier this evening.

Resident Frank Ferriolo questioned how serious it is when confidential information is shared when it should not be. He said he wants all Board and Commission members to be aware of how serious this action was, so that they realize the degree of the severity of these transgressions, and so that there is a clear direction that they should not do this sort of thing.

Resident John Markel read from the 2010 Oakland Township employee handbook, indicating that the email system is not intended for transmission of attorney-client communications.

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Resident Dick Michalski encouraged the Board and PRC to pursue this matter, to the full extent of the law, in an effort to try to restore the Township's reputation, and to demonstrate that Oakland Township obeys laws.

Resident Beth Markel noted that the PRC Commissioners each have between three and four email addresses in addition to their Township email addresses.

Resident Lana Mangiapane shared a number of observations. She questioned if there is a difference between confidential records and emails. She questioned what the Township's attorneys' roles are: to be advisors or investigators? She asked whose responsibility it was to look at the emails in question.

Vote on Motion:

MOTION CARRIED UNANIMOUSLY.

MOVED BY PERUZZI, SECONDED BY TOMBOULIAN, to direct Attorney Joppich to prepare a list of documents with the names, dates and subject matter along with a brief description of said documents for public distribution.

MOTION CARRIED.

Treasurer Langlois commented that she finds it troubling that this goes back more than a year, and it covers multiple issues such as labor and union negotiations, personnel issues, and litigation issues. We don't know how these releases impacted anyone. There are policies, procedures and processes in place designed to prevent what we are dealing with this evening. For example, virtually every email is marked as confidential. Additionally, she recalled that when she became a trustee, the Township Attorney explained what the attorney-client privilege means and how it relates to government entities. She believes that everyone who is here should have known better. The fact that there was this systematic, habitual disregard for the policies, procedures and processes is troubling. She said that we cannot guarantee that people will not violate these policies, procedures and processes, so she feels it is incumbent upon us to look into this matter thoroughly. As such, she feels that we have the duty to send this to a third party and ask them to review. One suggestion was to send this matter to the Oakland County Sheriff's Department.

MOVED BY LANGLOIS, SECONDED BY GONSER, to direct that the background information and results of the review of confidential emails shared by elected officials be submitted to the Oakland County Sheriff's Department for a determination as to what further investigation and/or action, if any, is warranted.

MOVED BY MACKLEY, SECONDED BY SCHMIDT, to direct that the background information and results of the review of confidential emails shared by elected officials

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Discussion on Motions:

Trustee Giannangeli stated that there clearly has been inappropriate behavior, and he supports review of the matter by a third party.

Trustee Buxar said she finds it very unfortunate that members of both the Board and PRC have engaged in what appears to be unethical behavior at minimum. This may be viewed as misconduct in office, or worse. She does not condone such repeated and blatant behavior. Residents should not only expect but insist that members of the Board and all boards and commissions, both elected and appointed, perform their duties and responsibilities to the Township with the utmost integrity. She supports forwarding this to the OCSD for their review.

Resident Dick Michalski said he does not feel the OCSD is the appropriate body to review this matter to determine if these actions are legal or not. Rather, he feels it would be better to have a third party attorney review the matter. He added that the relationship between the Township and the OCSD may influence their review.

Resident Lana Mangiapane said she feels the OCSD does a very good job investigating matters, and she believes they will forward the matter to the Attorney General if necessary.

Resident John Markel said he believes the Oakland County Sheriff is the highest legal official in Oakland County and that the OCSD is an appropriate entity to review this matter.

Resident Frank Ferriolo said he, as a resident, would like to have the people who acted unethically “carry the mark” for their actions so that others realize that if they cross this kind of line, there are “tolls to pay.”

At this time, Commissioner Mackley attempted to revise his motion to retain an attorney to direct us in the proper way to determine which entity should work this through. This motion failed for lack of a second.

PRC Chairman Zale said it is great to see these two bodies come together to try to figure out how to move forward. This is not a political issue but rather an ethical issue. All elected officials are entrusted to abide by the laws and respect the process of government and the offices to which they are elected. These are serious allegations and a serious violation of the process, and they warrant review. He feels that serious damage has been done to the Township’s reputation and to the process as a whole. .

He acknowledged that it might be good to have the matter reviewed by a third party attorney. However, he agreed that we can see what the OCSD has to say and then consider other options.

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Chairman Zale said Attorney Joppich has indicated that he is in a difficult position representing the PRC as a whole when there are allegations against one member of the PRC. Trustee Buxar said she feels both Attorney Kelly and Attorney Joppich have done their best in this difficult position.

Votes on Motions:

MOTION CARRIED UNANIMOUSLY (by the Board of Trustees).

MOTION CARRIED (by the Parks and Recreation Commission).

**ADJOURNMENT**

MOVED BY GONSER, SECONDED BY BAILEY, there being no further business before the Commission and the Board, to adjourn the meeting at 7:17 p.m.

MOTION CARRIED.

Respectfully submitted,

Ingrid R. Kliffel  
Recording Secretary

Approved,

Colleen Barkham  
Secretary

Approved,

Karen Reilly  
Township Clerk