

Florence Township Park Commission

Meeting Minutes – January 7, 2014

Attendance: Brad Stone, Bill Siewert, Julie Karlsrud, Dean Nelson and 13 guests

Minutes from the previous meeting were approved.

Park Activity Applications:

- Outstanding - 1 pending for Carolyn Hedin
1 approved for Ron Knudson
- New – Nancy Eustice
Brent Urbach
Rob and Kris Fugelstad
Bill Webster
Tom and Ann Johnson
Ron and Peggy Knudsen
Mike & Pricilla Flynn
Paul & Sandy Collopy
Karen Olson

A motion was made and approved to forward the new Park Activity Apps to the town board.

Park Business: Wakondiota – Roof over bleachers – pending

Frontenac Station – nothing at this time

Community Center – nothing at this time

Frontenac Point/Steamboat Landing – nothing at this time

Valhalla – revised proposal

Old Business:

Brent Urbach wanted to know what the status was on getting the Steamboat landing area surveyed. Joe approached Johnson and Scofield in Red Wing and they would not be interested in doing a survey since they feel it would be a conflict of interest since they do a lot of work for Bill Flies. An adverse ownership claim has been filed by Bill Flies and until this is settled they felt there was no need to spend the money for a survey at this time.

New Business:

Jim Reitter filed a request for an advisory opinion with the state of MN, Information Policy Analysis Division regarding the following matters:

1. Is the Florence Township Park Commission subject to the Open Meeting Law, Minnesota Statutes, Chapter 13D?
2. Did the Chair of the Park Commission comply with Minnesota Statutes, Chapter 13D, when he sent an email to various members of the public and the government?
3. Pursuant to Minnesota Statutes, Chapter 13D, are the Florence Township commissions required to provide copies of agendas?
4. Did the Florence Township Board comply with Minnesota Statutes, Chapter 13D, at the August 26, 2013 special meeting?

Mike Blair reported that we have received a response from the State (see below), reviewed by the Township's attorney, and all items except item 4 were in compliance with the MN Open Meeting Laws. The State commented that the August Town Board meeting location being changed from the Town Hall to the Community Center - because it was 105 degrees outside - was a violation of the open meeting laws.

The Park Commission matters were all found to be in compliance with Open Meeting Laws. Mr. Reitter's actions required Township assets to be spent on legal assistance. This amount will be reported, when it's available, at the following Park Commission meeting.

Brad visited on two occasions with Jon Alness from Zumbro Falls Forestry who had been referred to the Park Commission by Robert Schroeder. Jon visited Valhalla Park. Brad and Jon discussed his findings regarding the invasives and what they would do for the township. He felt that we need a master plan so that detailed bids could be submitted to start work, a master plan that the McGhie & Betts proposal includes.

We reviewed the revised proposal from McGhie & Betts (available on the Park Commission tab of the Township Website). They had removed many of the face to face community meetings and work shops as they learned from community input that there is no need for exercise areas, paths, etc. in this plan. The new proposal will get us a master plan, focus on vegetation management, include their attendance at two of our Park Commission meetings, and writing of up to two grants (grant deadline is Mar. 31). The cost is \$5,158. There is \$5,000 in the 2014 township budget for this purpose. Brad Stone has volunteered to pay the \$158 over the \$5,000 budgeted amount. A motion was made and approved to recommend the revised proposal to the town board.

There were emails exchanged regarding Zumbro Falls Forestry, and the revised McGhie proposal that were substantive enough to warrant attaching to these minutes.

The next meeting will be Tuesday, February 4th at 6:00 p.m. at the Community Center - not the Town Hall.

Park Commissioners contact information:

Brad Stone	612-226-6066	jbradstone@aol.com
Bill Siewert	651-345-4694	wvsiewert@gmail.com
Julie Karlsrud	651-345-4591	julie.karlsrud@gmail.com
Ron Knudsen	651-345-4359	rrknudsen@qwestoffice.net
Dean Nelson	651-380-0814	lund1800@hotmail.com

Meeting adjourned at 7:00 pm.

Respectfully submitted – Julie Karlsrud

Re: Zumbro Falls Forestry

Park Commission x



Brad Stone <jbradleystone@gmail.com>

to Robert, Jim, Joe, Susan, Thomas, Bill, Dean, Julie, Ron, Kristen, Tom, Mary, bcc: Brent

Hi Robert,

Thanks for your note.

You say you're disappointed. I don't understand why. Jon was helpful and I'm grateful to you for introducing him into the process.

You seemed to imply that I wouldn't give Alness an answer to his question regarding the disposal of materials. That presumes that I had an answer to give him. I don't.

And yes, that, along with many other considerations, would drive the cost of the project.

One example of an additional consideration is our Black Locust problem. Jon asked me about this infestation and how aggressively we wanted to address it.

Jon's questions are serious, professional questions which a bunch of amateurs are ill equipped to answer.

You also imply that I am only willing to work with Zumbro 'through' McGhie and Betts. Did Jon tell you that he recommended we create an overall park design, or 'roadmap', and that McGhie was better equipped to create such a plan than his firm?

Jon praised McGhie's abilities, stated that they work together a lot, and said how very capable they are to create the 'roadmap' we need.

You call this 'roadmap' a grand scheme. Call it what you like. But your friend Jon Alness applauded the idea of creating this grand scheme, and highly recommended McGhie & Betts as the firm to do it. I call that a confirmation of our process to date.

That's not cause for disappointment. That's cause for encouragement.

All the best,
Brad

On Tue, Jan 7, 2014 at 12:16 PM, Dr. Robert Schroeder <fiiedog@visi.com> wrote:

To be read and entered into the record:

7 Jan 2014

To: Florence Township Board and Park Committee

From: Robert A Schroeder

It is with some disappointment that I have learned from Jon Alness of Zumbro Valley Forestry that he will not be preparing or presenting any data concerning the reduction of invasive vegetation in the Valhalla Park acreage. It is my understanding that Alness did connect with Brad Stone and discuss the Park Committee's objectives (removal of invasive vegetation, preserve bird habituate, and create specified vistas). Alness performed a preliminary survey of the acreage, identified the problem species and assessed the degree of difficulty in removal and handling of these materials. In his discussions with Brad Stone, Alness asked about how the Park Committee wanted to handle the disposal of the cut materials, etc. Stone did not give Alness an answer to this question. How materials are handled after cutting makes a huge difference in the cost per acre for treatment. Alness made it clear to me that Brad Stone was committed to proceed with the previous proposal from McGhie and Betts and that they (the Park Committee) would welcome Zumbro's involvement but only through McGhie and Betts; i.e.: a subcontractor for doing the removal and handling of the selected vegetation.

My desire to advance the management of the invasive vegetation problem in Valhalla Park will apparently only be considered as part of the larger grand scheme plan being discussed for funding during the August and September of 2013 Parks Committee meetings.

Thank you Township Board and others for allowing this possible solution to be explored.

Robert Schroeder

From: Brad Stone [mailto:jbradleystone@gmail.com]

Sent: Sunday, January 05, 2014 3:56 PM

To: John Alness

Cc: Robert Schoeder; Jim McIlrath; Joe Ellingson; Susan Eisenmenger; Thomas Gnotke; Bill Siewert; Brad Stone; Dean Nelson; Julie Karlsrud; Ron Knudsen

Subject: Zumbro Falls Forestry

Hi Jon,

Thank you for your time on the phone on Friday. And thanks for looking over a draft of the email to ensure I wasn't putting words in your mouth.

Like we discussed, it seems our township needs two things at this point in our park restoration process:

1. a game-plan for how to restore Valhalla Park, and
2. an implementation partner for executing the game plan.

As we talked, it became clear to me that your firm would be a strong candidate to help us with the 'implementation' phase of our restoration. It also became clear to me from what you said that McGhie & Betts would be an excellent firm to help us with developing a 'game-plan'. The long term, successful professional relationship between your two firms is a testimony to your respective strong capabilities.

I really appreciate you taking the time to look at our project and discussing it with me. At this point in our process I think it makes sense to continue developing our 'game-plan', and then looking for a firm like yours with strong 'implementation' capabilities.

Thanks again Jon.

All the best,

Brad Stone

McGhie Updated Proposal - January 2014

Park Commission x



Brad Stone <jbradleystone@gmail.com>

to Bill, Dean, Joe, Julie, Ron, Jim, Susan, Thomas, bcc: me, bcc: Brent

January 4th, 2014

Dear Park Commissioners and Township Supervisors,

Please find attached a revised proposal from McGhie and Betts. This proposal has been updated based upon extensive community input over recent months that we have received since their first proposal was made. McGhie has been working with us for the past 12 months. They made their first proposal back in September in response to the Park Commission's request at that time, based upon our progress to date. They have submitted this updated proposal to better address our needs today.

This proposal focuses on, and further develops, the 'vegetation management' component of the Valhalla Park plan included in their first proposal. As such, it is not a new proposal, and I suggest, does not require an additional three months of consideration and debate. McGhie highlights in the proposal a grant application deadline of March 31st, 2014 involving grants for which, in their estimation, we are a good candidate.

At the township's annual meeting last year, an allocation of \$5,000 was made for the creation of a professional Park Design for Valhalla Park in the 2014 budget. We need a roadmap before we can implement a coherent approach to Valhalla. The Park Design is that roadmap. The New Year, 2014 is upon us, and we have a proposal to create the Park Design for \$5,158. (Since there is now a precedent for this sort of thing, I would be happy to personally donate \$158 to the Township to offset the amount above \$5,000 to pay for the Design.)

The cost of the attached revised proposal is roughly half of the initial proposal because the community-based input process, which has unfolded by itself in recent months, no longer requires professional facilitation over a series of meetings. It was these multiple meetings that drove the higher costs of the first proposal. In the revised proposal, McGhie will be focusing most of their time on the creation of a professional Park Design, rather than facilitating public meetings. This will be a more efficient use both of their time, and of township funds. The creation of a Professional Design is necessary step in the grant solicitation process. Without it, the likelihood that Florence Township will receive grant money to help finance improvements in our parks is remote.

This revised proposal has grown out of a 12 month-long process during which the Park Commission has acted in accordance with the requirements of the Town Board's updated Park Management Process. The process has taken a long time and involved many community-based meetings that have at times been contentious, but have at all times allowed for as much public input as the community wanted to make. The process has been grass-roots oriented, and has refrained from allowing individual residents to dominate it.

Florence Township needs a roadmap before it begins building the road. The McGhie proposal is focused on creating a Park Design that will serve both as a roadmap for the initial restoration, and as a template for future maintenance. It includes both an inventory of heritage trees, and per acre restoration cost estimates. It is not primarily a contractor's estimate to build a road. We first need a plan. Then we can implement.

Recently the township received a generous offer from a resident to donate \$1,000 for a forester to provide a vegetation inventory of Valhalla, and an estimate for how much it will cost per acre to eradicate invasive species from the park. Allowing a resident to contribute financially to the process is advantageous. It should not, however, impede the progress of 12 months of community-based work, performed in accordance with the Town Board's formal Park Management Process, focused on achieving township-wide goals. If the generous resident would like to participate in

the formal Park Management Process, the Park Commission would welcome his donation of \$1,000 to apply toward either the McGhie proposal, or the implementation phase of the project.

Additionally, I believe it would be useful to consider allocating the savings from the initial proposal toward improving both Wakandiota and Frontenac Station Parks. Regarding Wakandiota, I suggest we solicit bids for restoring the electricity to the Wakandiota Pavilion, and looking into the cost of adding more permanent bathroom facilities in the park.

I recommend accepting the McGhie revised proposal at our January Town Board meeting to continue our progress to date. I have attached an electronic MS Word document containing this email in the event you would find that format useful.

All the best,
Brad Stone

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Reitter Issue:

Advisory Opinion 13-015

This is an opinion of the Commissioner of Administration issued pursuant to Minnesota Statutes, section 13.072 (2013). It is based on the facts and information available to the Commissioner as described below.

Facts and Procedural History:

On October 30, 2013, the Information Policy Analysis Division (IPAD) received an advisory opinion request from Jim Reitter, dated October 28, 2013. In his letter, Mr. Reitter asked the Commissioner to issue an advisory opinion regarding the Florence Township Board of Supervisors (the Board) members' conduct under Minnesota Statutes, Chapter 13D, the Minnesota Open Meeting Law (OML).

IPAD requested additional information, which Mr. Reitter provided on November 6, 2013.

On November 12, 2013, IPAD wrote to Mike Blair, Chair of the Board. In its letter, IPAD informed Mr. Blair of Mr. Reitter's request and gave the members of the Board an opportunity to explain their position. On December 5, 2013, IPAD received a response, dated same, from Einar Hanson, attorney for the Board.

A summary of the facts provided by Mr. Reitter follows.

On August 19, 2013, the Florence Township Park Commission held a regularly scheduled meeting at the Township Hall, which Mr. Reitter attended and recorded. During the meeting, Mr. Reitter asked for and received a copy of the agenda. He then inquired as to whether the Commission made agendas available prior to the meetings, and the Chairman, Brad Stone, responded that the Commission did not publish agendas.

The Park Commission meeting also included a discussion of an email that Mr. Stone had sent to a number of people, including all other Park Commission members, chairs of the other Township commissions, a Township Board supervisor, and several members of the public. The Park Commission provided Mr. Reitter a copy of the email to review during the meeting and Mr. Stone later sent Mr. Reitter a copy. The email encouraged the recipients to attend the August 19, 2013, Park Commission meeting and the August 26, 2013, Township Board meeting. The email also provided information about the possible sale of certain property within the Township and arguments for opposing the sale.

Mr. Reitter continued:

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On Sunday, August 25, I went to the Florence Township Town Hall and reviewed an announcement which had been posted for a special meeting identified as "Florence Township will have a special meeting on Monday, August 26th at 7:00 p.m. at the Town Hall for approval of an updated comprehensive plan."

I arrived to attend the Florence Township Board regularly scheduled meeting on August 26, 2013 scheduled for 6 p.m. at the Florence Township Town Hall. Upon arriving at the town hall, there was an announcement posted that the meeting location had been moved to the Florence Township Community Center. The meeting started at 6:15...

...

At 7:00 p.m., an announcement was made that the remainder of the regular town board meeting was going to be suspended/postponed so that the special meeting to review the

updated comprehensive plan could occur... After the review of the updated comprehensive plan, it was announced that the remainder of the regular town board meeting would continue and the township board business from the prior suspended/postponed agenda continued.

Issues:

Based on Mr. Reitter's opinion request, the Commissioner agreed to address the following issues:

1. Is the Florence Township Park Commission subject to the Open Meeting Law, Minnesota Statutes, Chapter 13D?
2. Did the Chair of the Park Commission comply with Minnesota Statutes, Chapter 13D, when he sent an email to various members of the public and the government?
3. Pursuant to Minnesota Statutes, Chapter 13D, are the Florence Township commissions required to provide copies of agendas?
4. Did the Florence Township Board comply with Minnesota Statutes, Chapter 13D, at the August 26, 2013 special meeting?

Discussion:

Issue 1. Is the Florence Township Park Commission subject to the Open Meeting Law, Minnesota Statutes, Chapter 13D?

There is no dispute that the Florence Township Board of Supervisors is subject to the OML. The question before the Commissioner is whether the Township Park Commission is also subject to the law.

Minnesota Statutes, section 13D.01, subdivision 1, states in pertinent part:

All meetings, including executive sessions, must be open to the public

(c) of any

(1) committee,

(2) subcommittee,

(3) board,

(4) department, or

(5) commission,

of a public body....

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In his response to the Commissioner, Mr. Hanson described the Park Commission as being, "under the authority of the Board of Supervisors" and that it "provides recommendations to the Board of Supervisors concerning matters within the scope of the Commission's duties, as expressly stated in the ordinance creating it." Mr. Hanson provided the Commissioner with a copy of the ordinance. Article 1 establishes the Commission and provides that the Commission will be made up of five residents and an ex-officio member, all selected by the Board. Article 2, establishes the Commission's powers, duties and procedures. Amongst these, are the powers: to advise the other Township commissions; to draft and maintain a park management plan; to draft and maintain an application procedure for Town residents; to recommend to the Board the acquisition of land; and to recommend to the Board the use of eminent domain and variances.

Section 2.01, subsection (1) of Article 2, also states:

Business shall be conducted by the Commission at regularly scheduled public meetings as prescribed in its bylaws and the Minnesota Open Meeting Law. The Commission shall make every effort to preserve the public nature of its meetings.

Mr. Hanson argued that the Park Commission is not subject to Chapter 13D based on the holding in *Sovereign v. Dunn*, 498 N.W.2d 62, 67 (Minn. Ct. App. 1993) (*rev. denied*). However, the Commissioner is not persuaded that *Sovereign* applies here based on the plain language of section 13D.01, subdivision 1(c) and the ordinance creating the Commission.

The Commissioner has previously addressed the issue of an all-citizen advisory panel that was created in statute, with duties both complementary and distinct from the public body under which it was created. (See Advisory Opinion 08-007.) In concluding that the advisory panel was subject to Chapter 13D, as a "committee of a public body," the Commissioner opined:

All of these functions are actions taken on behalf of citizens who will be impacted by the decisions that are made about providing energy to the Rock Tenn recycling operation. As stated by the Minnesota Supreme Court in the *Prior Lake American* case, these are the types of discussions that should occur in public and any decision should be made in public.

The Commissioner concludes that the Park Commission is a "commission of a public body," and subject to the requirements of the OML.

Issue 2. Did the Chair of the Park Commission comply with Minnesota Statutes, Chapter 13D,

when he sent an email to various members of the public and the government?

The Commissioner has previously opined that the exchange of emails can lead to a violation of the OML. (See Advisory Opinion 09-020.) In that opinion, a quorum of the Metro Gang Strike Force Advisory Board exchanged at least seven emails in an attempt to agree on language for a press release. The Commissioner concluded that the exchange was tantamount to a virtual meeting that was required to be open pursuant to the OML. Per Advisory Opinion 09-020: The Commissioner is aware that Minnesota courts have not ruled definitively on this issue. However, given the facts here, the Commissioner believes that per [*Moberg v. Independent School District No. 281*, 336 N.W.2d 510 (Minn. 1983)] and [*St. Cloud Newspapers, Inc. v. Dist. 742 Cmty. Schs.*, 332 N.W.2d 1, 4 (Minn. 1983)], the conduct of the Advisory Board 13-015

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constituted a meeting, which was required to be public, and as such is impermissible under the OML.

If Mr. Allen had sent his suggestion only to Mr. Shaver, and if Mr. Shaver had taken action without consulting a quorum of the Board, then, in the Commissioner's view, that conduct would be permissible. It seems reasonable that one-way communication between the chair and members of a public body is permissible, such as when the chair or staff sends meeting materials via email to all board members, as long as no discussion or decision-making ensues.

Here, Mr. Stone sent an email to various members of the public and to all of his fellow Commission members. However, it is not clear from the record whether he received any response to it or engaged in any further discussion with a quorum or more of his colleagues on the Park Commission. (Any concern about Mr. Stone's communication with the public is not within the scope of the OML.)

To the extent that Mr. Stone's email was a one-way communication, the Commissioner concludes that it did not violate the OML. The Commissioner reminds public bodies to be cautious in their use of email as a tool to conduct public business.

Issue 3. Pursuant to Minnesota Statutes, Chapter 13D, are the Florence Township commissions required to provide copies of agendas?

Chapter 13D is silent with respect to agendas; it neither requires nor prohibits them. However, Minnesota Statutes, section 13D.01, subdivision 6(a), provides:

(a) In any meeting which under subdivisions 1, 2, 4, and 5, and section 13D.02 must be open to the public, at least one copy of any printed materials relating to the agenda items of the meeting prepared or distributed by or at the direction of the governing body or its employees and:

- (1) distributed at the meeting to all members of the governing body;
- (2) distributed before the meeting to all members; or
- (3) available in the meeting room to all members;

shall be available in the meeting room for inspection by the public while the governing body considers their subject matter.

Mr. Hanson writes that subdivision 6(a), "does not say that copies of the agenda must be provided." Though Mr. Hanson is correct that the subdivision does not use those specific words, an agenda is comprised of the actual agenda items and as such, an agenda is the clearest example of material "relating to the agenda items of the meeting." Therefore, it is the Commissioner's opinion that it is unreasonable for the Board to take the position that the subdivision would not to apply to the agenda itself.

To the extent that an agenda is prepared or distributed to members of the body, Chapter 13D requires that at least one copy is made available to the public at the meeting. (See also, Advisory Opinions 01-058, 07-014, 07-024, and 08-015.) (The Commissioner notes that certain public bodies subject to Chapter 13D may be required to create an agenda pursuant to other authority applicable to those bodies.)

The Commissioner agrees with Mr. Hanson that the OML does not require the Board to make agendas available in advance of meetings. (Non-metro townships are not subject to Minnesota 13-015

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Statutes, Chapter 13, the Data Practices Act. In government entities subject to Chapter 13, members of the public may request and must receive copies of agendas prior to meetings, if any such agendas exist.)

Issue 4. Did the Florence Township Board comply with Minnesota Statutes, Chapter 13D, at the August 26, 2013 special meeting?

Pursuant to Chapter 13D, public bodies may hold three types of meetings: regular, special, and emergency. For regular meetings, Minnesota Statutes, section 13D.04, subdivision 1, requires

public bodies to keep a schedule on file at its primary offices. A meeting that differs in date, time or location from a regular meeting, is a special meeting. Pursuant to subdivision 2, a public body must post written notice of a special meeting at least three days before the meeting and include the date, time, place, and purpose on the notice. An emergency meeting, as defined by subdivision 3(d), is “called because of circumstances that, in the judgment of the public body, require immediate consideration by the public body.”

Here, the Board changed the place and time of the August 26, 2013, regularly scheduled meeting on the day of the meeting. By doing so, that meeting became a special meeting requiring three days’ notice. The Board had previously noticed a special meeting for the same date, for which the location was also changed, thus requiring the Board to re-notice the meeting. Mr. Hanson explained that due to the weather and a lack of air conditioning in the Town Hall meeting room, the Board moved the meetings for the comfort of the attendees. He asserted that the need to move the meeting “could be considered an emergency... and the notice given by posting it at the bulletin board of the regular meeting place was sufficient notice.”

The Commissioner has previously opined that, “examples of emergency situations would include holding a meeting to respond to a natural disaster or to a health epidemic caused by an event such as an accident or terrorist activity.” (See, Advisory Opinion 06-027.) Because an emergency meeting is one in which a public body considers the response to an emergency situation, neither the Board’s regularly-scheduled meeting at 6:00 p.m. nor the special meeting at 7:00 p.m. constituted an emergency meeting, such that a change of location would not require three days’ notice.

When conditions that require a change in the regular or previously-noticed schedule occur but fall short of requiring immediate consideration, the Board must provide three days’ notice that includes the date, time, place, and purpose of the meeting. Changes to any of those notice requirements that occur before the meeting but after notice is posted require an additional three days’ notice.

The Commissioner understands that occasionally unforeseen circumstances arise that might require a reasonable change of location (i.e., a room in a different building nearby). He encourages the Legislature to consider including language in Chapter 13D that would allow a reasonable change of location for meetings that are currently required to be cancelled and rescheduled for a date at least three days later.

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Opinion:

Based on the facts and information provided, the Commissioner’s opinion on the issues Mr. Reitter raised is as follows:

1. The Florence Township Park Commission is subject to Minnesota Statutes, Chapter 13D.
2. To the extent that Mr. Stone’s email was a one-way communication that did not result in a continued discussion with a quorum or more of the Park Commission members, the email complied with the Open Meeting Law.
3. Minnesota Statutes, Chapter 13D is silent with respect to agendas. To the extent that Florence Township Commissions create agendas, they should be made available to the public as part of the members’ materials, pursuant to Minnesota Statutes, section 13D.01, subdivision 6.
4. Because the Board changed the time and location of a regularly scheduled meeting and the location of a previously noticed special meeting, the August 26, 2013 meetings were special meetings requiring a notice of at least three days, which should have included the date, time, place, and purpose.

Spencer Cronk
Commissioner

December 23, 2013