

County board nixes open meetings pact

By Pat Murphy
staff writer

At least one commissioner welcomes the chance to tell "an impartial judge" about the now famous informational meeting in Washington, D.C., and why he believes it was not a violation of the state Open Meetings Act as alleged by the Oakland County prosecutor.

"We were there to do a more effective job for Oakland County," said commissioner Lawrence R. Pernick, D-Southfield, referring to the March 17 meeting he and 18 others on the Board of Commissioners held while attending a conference of the National Association of Counties.

"I will have no hesitation telling that to an impartial judge, but (Oak-

land Prosecutor Richard) Thompson has an axe to grind — his re-election effort," said Pernick, who insists his personal integrity — as well as that of his colleagues — is being attacked.

The Oakland County prosecutor, however, considers the meeting to be a "disregard for the law," one so serious it undermines the integrity of county government.

"It defeats the very purpose of the Open Meetings Act," prosecutor Richard Thompson said during a press conference Thursday afternoon — shortly after filing suit against the Board of Commissioners for allegedly holding a closed meeting.

Oakland Circuit Judge Hilda Gage, seeks a declaration that a violation of the law occurred, and an order specifying that future meetings comply with the Open Meetings Act.

At a hearing Friday afternoon, Gage refused to issue a temporary order. She scheduled a hearing for Nov. 25.

Commissioners had the opportunity to avoid a court showdown at Thursday's semi-monthly board meeting. They were asked to ratify an agreement — reached about three weeks earlier by Thompson and Roy Rewold, board chairman — saying the March 17 "may have constituted an unintentional violation of the Open Meetings Act" and stipulating that future meetings would comply with the law.

By a 19 to 5 vote, however, commissioners rejected the agreement. The only commissioners in favor were Rewold, R-Oakland Township; Frank Millard, R-Sylvan Lake; Larry Crake, R-Waterford; Richard Skarritt, R-Milford; and Donna Hutton, R-Clarkston.

During the meeting and during a caucus prior to it, some commissioners, including Pernick and Thomas A. Law, R-West Bloomfield, said they hadn't done anything wrong and objected to any kind of admission.

Others said the open meetings act has ambiguities. They wanted court action, or additional negotiations, to clarify the law, possibly with assistance from the Attorney General's office.

Commissioner Dennis Aaron, D-

Oak Park, complained that wording in the agreement was "very painful, because it isn't true. But these ugly words are being forced down our throats."

Two commissioners, however, said the March 17 meeting violated the Open Meetings Act, and urged ratification. Millard and Ruel E. McPherson, D-Hazel Park, urged their colleagues to ratify the agreement in order to resolve the issue.

Instead, however, commissioners instructed chairman Rewold, a Republican from Oakland Township, or his attorney, to reopen negotiations with the prosecutor to get a more acceptable agreement — despite a warning from Commissioner David L. Moffitt, R-Farmington Hills.

Thompson said he took action against commissioners because, "I'm not a member of their club and commissioners needed reminding that they are subject to the law."

"If I let this go, they might hold their next meetings in Windsor or Toledo, somewhere away from public scrutiny."

The prosecutor predicted that commissioners would be open about his action and retaliate politically. "They control my salary, my budget and the number of assistants I have," he said. "But I didn't take this job to be a puppet."

Both Rewold and commissioner Nancy McConnell, R-Bloomfield Hills, were unavailable for comment on the prosecutor's suit.

But commissioner John G. Pappageorge, chairman of the Republican caucus, said he was "disappointed. I thought we were in the process of identifying the issues and resolving any differences," he said.

Community zoning power upheld

By Tim Richard
staff writer

An attorney for eight area communities in Oakland County hailed the Michigan Supreme Court's decision upholding a Brandon Township zoning ordinance.

"It's a very important and critical ruling, favorable to governmental entities and clarifying the law as set down by the U.S. Supreme Court," said attorney Gerald A. Fisher of Farmington Hills.

The state's highest court held that Brandon Township didn't take the property of William and Wava Bevan when its zoning ordinance prohibited them from building two houses on their property because of inadequate roads.

Their property is served by a non-conforming private access road over a neighbor's land.

The Bevans sought an injunction against enforcement of the zoning ordinance. They argued it amounted to taking of their property.

FISHER FILED an amicus curiae (friend of the court) brief siding with Brandon on behalf of the cities of Bloomfield Hills, Farmington, Farmington Hills and Auburn Hills; the townships of Bloomfield, Oakland, West Bloomfield and Independence; and the Michigan Municipal League.

Justice Robert Griffin said the property, although comprised of two parcels, "is to be considered as a

whole for purposes of 'taking' analysis."

"That was a strong position I took," said Fisher of the firm of Kohl, Seest, Wardle, Lynch, Clark and Hampton. He said the U.S. Supreme Court took that position although some courts have considered the second property isolated.

OAKLAND CIRCUIT Judge James Thorburn granted the Bevans an injunction. A Court of Appeals panel affirmed the decision, but the township appealed to the Supreme Court.

Griffin and four other justices held that Brandon's regulation did not amount to a "taking without just compensation."

"Where a regulation promotes the

health, safety, morals or general welfare, it has been upheld even though it may adversely affect recognized property values," he said.

After saying the burden was on the Bevans to prove the regulation had no relation to public protection, Griffin said:

"In this case, the ordinance, on its face, is a legitimate exercise of the township's police power, providing for the safety of its citizens."

Justices Charles Levin, James Brickley, Dorothy Riley and Conrad Moffitt Jr. also signed the decision. Chief Justice Michael Cavanagh and Justice Patricia Boyle concurred in the result only.

Within two hours of the board's refusal to ratify the proposed agreement, Thompson filed his suit, suggesting he indeed wanted to teach commissioners a lesson.

"They intended to discuss this issue (the proposed \$500 million solid waste program) away from public view," Thompson said about the meeting. "It was arrogant."

"This was not some minor issue they were discussing. This is the largest single tax issue in the history of the county. Now they (commissioners) refuse to take the responsibility of their actions."

Thompson refused to acknowledge claims by commissioners that the meeting was a chance, social meet-

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