

Conducting the Public Hearing Required for Zoning Related Requests

Elwood Illinois Case Study



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Village of Elwood Application of “Northpoint” for Annexation, Zoning and Planned Unit Development

- 851 Acres
- Several hundred additional acres in adjoining municipality



Impact of Social Media and Internet

- Facebook
- Neighborhood Forums
- Organized activity sites



Open Meetings Considerations

Suitable Accommodations

- “All meetings required by this Act to be public shall be held at specific times and places which are convenient and open to the public . . . ” (5 ILCS 120/2.01)
- *Gerwin v. Livingston County Board* – 345 Ill App. 3d 352

Due Process Considerations

- Case Law considerations
- Statutory considerations

“The Principles of substantive and procedural due process apply at all stages of the decision making and review of all zoning decisions.”

(65 ILCS 5/11-13-25)

Elwood Hearings

1. Accommodations for 600+ at Village Hall
2. Accommodations for 1,000 at local school
3. Accommodations for 1,000 at local school



Hearing 1

Elwood Village Hall

- Village board Room – 50 capacity
- Village community room with direct view to board room – 96 capacity
- Village Hall basement – 335 capacity
- Village Hall Administrative Offices – 150 capacity
- Multiple large screen monitors
- Audio throughout all rooms, foyer and outside of building
- 14 officers/deputies
- Sign-in process
- Cueing for speakers
- Accommodations for video presentations by public





Village Hall Scope of Work

- Set up and tear down – 104 total man hours
- Hours on site – 60 man hours
- Monitors – 17
 - 10 Oversize for audience
 - 7 for Planning and Zoning Commission
- Projection Units – 3
- Audio Speakers – 12
- Microphones – 14
- OMA Complaints – 30+

Social Media post during meeting


- “Let the OMA violations rain down on them.”

[December 19, 2017 at 7:16pm](#) · [Channahon, IL](#)

EVERYONE START CHANTING SAY NO and drown them out.

[Admin](#) · [December 19, 2017 at 11:15pm](#) · [Elwood, IL](#)

LET THE OMA VIOLATIONS RAIN DOWN ON THEM!

 Everyone call Better Government Bureau
and let them know this is happening
877-299-3642
OPEN MEETING ACT VIOLATION You are not being allowed to
attend a public hearing. Doors closed before meeting start time

PAC Complaints

- Accommodation
- Limiting Testimony

Attachments

- DJS – Introductory Comments
- Public Hearing Rules
- Response to PAC on Accommodations Issue
- Response to PAC on Limiting Testimony

Introductory Comments

PLAN COMMISSION INTRODUCTORY NOTES

Introduce Dave Silverman and Jordan here with the Village Administrator Marian Gibson, The Village Engineer Jim Sparber, and planning consultant Ferhat Zerlin.

We are here as staff to assist the commissioners.

1. Open Meetings Act – Livingston County and Illinois Attorney General opinion 2017

-Village is required to take reasonable measures to accommodate the group.

2. The Village of Elwood and this Commission has taken every possible measure to provide the public with the opportunity to hear, see and safely participate in this hearing. In my experience I have never seen any public body take extensive measures like here tonight to support the public. As required, the entire building is handicap accessible and we have special reserved handicapped seating.

-Seating for _____ people

Our public safety officers are here for you and are positioned throughout Village Hall. In the event of a medical emergency or any issue, please alert one of the officers.

We have installed an extensive closed-circuit TV and audio system with large, high-definition screens that will carry full audio and video of these proceedings. We have a full audio-visual team located throughout the Village Hall to ensure all systems are functioning as designed. You will be able to hear and see everything.

We have a camera located behind the Commission, this will show the person speaking at the podium; and we have two cameras at the rear of the room that will capture the Commission, Village Staff and the Petitioner. Furthermore, all exhibits presented tonight will be carried on additional high-definition monitors. We also have a laptop at the podium, so if you have a presentation to share, you may use this laptop for all to see. We have an audio-visual tech here in the room to assist.

To facilitate a safe and efficient process for those who wish to participate by making comments or asking questions tonight, we have developed a simple Speaker Sign-Up process. We appreciate and ask for your patience.

We have Village staff at the front entrance to sign-up those wishing to speak/participate. If you want to speak or have a question and have not signed-in, please complete a blue speaker sign-up card at the entrance on the first floor. Please hold onto your stub with your speaker number. Your number will be called in sequence by the Village Clerk. When your number is called, please proceed to the First Floor lobby and wait for your turn. Because numbers are called in order, like at the bakery, if we're on number 50 and you have number 25, please proceed to the First Floor lobby.

If you change your mind and don't wish to speak, then just ignore your number when called. AND if you want to be added to the speaker list, then you can sign-up at any time at the entrance on the first floor.

Again, thank you for your patience and understanding.

Introductory Comments continued

3. The purpose of the Public Hearing is to consider testimony and other evidence with respect to the application of an Annexation and Development Agreement between the Village of Elwood and East Gate – Logistics Park Chicago, LLC and Northpoint.

4. The Application requests

a) rezoning of approximately 176 acres already annexed to the Village. This portion of property is currently zoned I-4 and the Petitioners seek to rezone it to the less intensive I-2 District.

b) rezoning upon annexation of approximately 675 acres from what is now currently Industrial to the I-2 District.

c) a special use for a Planned Unit Development to create an unified development with certain exceptions

c) a special use for a Planned Unit Development to create an unified development with certain exceptions from the Village Code and to allow a Cargo Container Storage Area on a portion of the 675 acres property.

5. The goal of the hearing is to provide everyone – the petitioners, objectors, and other interested parties - with a fair hearing.

6. The Public Hearing will be conducted as set forth in Ordinance No. 734, which contains the suggested rules for Public Hearings.

-Most likely only one (1) chance to speak or ask questions per person.

7. Go over the rules – combine e & f.

-Statements
-Evidence
-Questions
NOT Debate

-When your number is called:

- 1) Ask questions of Petitioners when done
- 2) Provide your testimony and other evidence
- 3) You may then be asked questions by Commissioners
- 4) You may be then asked questions by Petitioners

8. Closing argument –

This will be determined later in terms of time allotted.

-Not everyone will participate in closing.
-The Petitioners and supporters will be given time.
-Other Interested Parties
-Choose 1-3 people to represent you
-Or it will be determined by lottery of those interested

Introductory Comments continued

9. There is a court reporter present to create a verbatim record of the proceedings.

10. The reporter can only take the testimony of one person at a time.

-Can only take verbal responses

11. The reporter will take the testimony of persons who have been recognized by the Chair.

12. Comments made from the audience will not be part of Public Record.

13. Experience is that many people may want to offer the same testimony as others. If this is the case, you may do so or you may simply say that you are expressing the views of other witnesses and your testimony will be given the same weight as if you repeated the testimony of other witnesses.

14. Exhibits – Place your name and exhibit number on each exhibit and send it to Jordan when you are finished.

- Again, those with a thumb drive or other types of Exhibits
- See IT Person

Introductory Comments continued

15. Anyone wishing to testify will be sworn in by the Chairman at one time – en masse.

16. The Commissioners ask for your cooperation to maintain an appropriate decorum for the hearing.

17. At the conclusion of the Public Hearing it will be closed by the Commissioners who will then discuss and deliberate the issues presented.

18. Open the Public Hearing

19. Swear in those who wish or may wish to testify.

-Do you solemnly swear or affirm that the testimony you will give will be the truth.

Public Hearing Rules Adopted by Ordinance

SUGGESTED RULES FOR PUBLIC HEARING

1. All hearings of the public body shall be subject to the Illinois Open Meetings Act.
2. The Chair may impose reasonable limitations on evidence or testimony presented by persons and parties barring repetitious, irrelevant or immaterial testimony. Time limits, if imposed, shall be fair, and equally administered. The public body shall not be bound by strict rules of evidence; however, irrelevant, immaterial, or unduly repetitious evidence shall not be admissible. The Chair shall rule on all questions related to the admissibility of evidence. The Chair may impose reasonable conditions on the hearing process based on the following factors:
 - a. The complexity of the issue.
 - b. Whether the witness possesses special expertise.
 - c. The degree to which the witness's testimony relates to the factors to be considered in approving or denying the proposal.
 - d. Such other factors appropriate for the hearing.
3. The Chair may take such actions as are required to maintain an orderly and civil hearing.
4. Proof of lawful notice shall be introduced into evidence before the public body.
5. A record of proceedings (i.e. a verbatim transcript prepared by a court reporter) may be made as directed by the public body.
6. At a public hearing, a Petitioner may appear on his or her own behalf or may be represented by an attorney.
7. The municipality shall be a party in every proceeding, and need not appear.
8. In addition to the Petitioner, any person may appear and participate at the hearing.
9. People participating shall identify themselves for the record, either orally or in writing, and indicate if an attorney represents them. Any person participating, other than the Petitioner, shall be referred to in these rules as Interested Person.
10. The examination of a witness shall not be used by the questioner to offer testimony or evidence of the questioner.

11. All persons offering testimony at a hearing shall testify under oath. An attorney shall be sworn if he or she offers testimony but not if he or she is questioning witnesses, summarizing testimony of witnesses, or addressing the public body.
12. The order of presentation of evidence at a public hearing shall generally be as follows, but may be modified as determined appropriate by the Chair:
 - a. Identification of Petitioner and Interested Persons.
 - b. Submittal of proof of notice.
 - c. Testimony and other evidence by Petitioner.
 - d. Public body examination of Petitioner's witnesses and other evidence.
 - e. Cross-examination of Petitioner's witnesses and other evidence by Interested Persons.
 - f. Testimony and other evidence by Interested Persons.
 - g. Public body examination of Interested Persons' witnesses and other evidence.
 - h. Cross-examination of Interested Persons' witnesses and other evidence by Petitioner.
 - i. In some cases re-examination may be allowed.
 - j. Report by staff, if any.
 - k. Summary/Closing by Petitioner.
 - l. Summary/Closing by Interested Persons.
 - m. Rebuttal/Closing by Petitioner.
13. At the conclusion of an evidentiary portion of the public hearing, the public body may, among other actions, move to deliberate its decision on the evidence presented, or continue the hearing to a date, time and location certain.
14. A written decision shall be prepared which shall include findings of fact (if required by Ordinance) and the public body's recommendation or decision based upon the record.
15. These Rules for Public Hearing may be amended by a vote of a majority of the Village Board.

Open Meetings act Request for Review Accommodations Response

**The Law Firm of
MAHONEY, SILVERMAN & CROSS, LLC**

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January 4, 2018

Mr. Neil P. Olson
Deputy Public Account Counselor
Public Finance Bureau
500 South Second Street
Springfield, IL 62706

RE: OMA Requests for Review – 2017 PAC S0896; 2017 PAC S0897;
2017 PAC S0898; 2017 PAC S0899; 2017 PAC S0900; 2017 PAC S0901; 2017 PAC S0902; 2017 PAC S0903; 2017 PAC S0904;
2017 PAC S0905; 2017 PAC S0906; 2017 PAC S0907; 2017 PAC S0908; 2017 PAC S0909; 2017 PAC S0910; 2017 PAC S0912;
2017 PAC S0928; 2017 PAC S0929; 2017 PAC S0930; 2017 PAC S0931; 2017 PAC S0932; 2017 PAC S0933; 2017 PAC S0934;
2017 PAC S0935; 2017 PAC S0936; 2017 PAC S0937; 2017 PAC S0938; 2017 PAC S0939; 2017 PAC S0940; 2017 PAC S0941; 2017 PAC S0942; 2017 PAC S0943; 2017 PAC S0944; 2017 PAC S0945; 2017 PAC S0946; 2017 PAC S0947; 2017 PAC S0948; 2017 PAC S0949; 2017 PAC S0950; 2017 PAC S0951; 2017 PAC S0952; 2017 PAC S0953; 2017 PAC S0954; 2017 PAC S0955; 2017 PAC S0956; 2017 PAC S0957; 2017 PAC S0958; 2017 PAC S0959; 2017 PAC S0960; 2017 PAC S0961;
2017 PAC S0977

Dear Mr. Olson:

This letter is written in response to your correspondence dated December 28, 2017. It is the Village of Elwood's position that it complied with section 2.01 of the Open Meetings Act (5 ILCS 1202.01) in connection with the public hearing that was held at 7:00pm on December 19, 2017 at the Elwood Village Hall. Included with our Response are several enclosures to support the assertions made herein.

This letter will not address each complaint individually. The Village of Elwood complied with the Open Meetings Act because it made extensive accommodations to provide reasonable access and participation to members of the public. The Village was prepared to accommodate a large number of people. An extensive closed-circuit TV and audio system was installed. This system consisted of high-definition screens so the public who attended could meaningfully follow the testimony and presentation of both the petitioner's witnesses as well as the interested parties who had the opportunity to question witnesses as well as provide their own testimony and evidentiary exhibits. It is the Village's understanding that video of the meeting was streamed and available for viewing online from the local newspaper Herald NetNews.

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OSWEGO COUNTY CLERK: 105 S. WASHINGTON STREET MORRIS, IL 60440 (815) 513-5457
PRAIRIE RIDGE TOWN CLERK

Mr. Jay P. Olson
January 4, 2017
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MAHONEY, SILVERMAN & CROSS, LLC

Furthermore, there were approximately fourteen law enforcement officers and auxiliary officers stationed both inside and outside Village Hall to ensure all attendees a safe environment and also assist with any issues that may arise. In addition to the visual and audio broadcasting that was established inside and outside of Village Hall, there was a speaker sign-up table available for every attendee at the main entrance of the building. The process to sign up was explained as attendees entered Village Hall. The sign-up process was also explained at the commencement of the hearing and that anyone who wished to speak could sign up and would be called in the order of the number they were assigned. It was further explained that if anybody did not sign up to speak, but later decided to provide testimony or evidence, that they would continually have the opportunity to sign up. The accommodations provided in conjunction with this public hearing fulfilled both the letter and spirit of the Open Meetings Act.

The Village did not have an exact estimate of how many people would attend the public hearing. Customarily, attendance at Zoning and Planning Commission meetings is extremely low and is not a predictive measure for the expected turnout for this particular hearing. As stated in many of the Requests for Review, the development proposal has been a contested issue in the Village this past year. Approximately 50 members of the public have been attending the Village's monthly board meetings in conjunction with discussions regarding this potential development. The Village did expect several hundred people, and did accommodate over 600 who attended the hearing. For reference, Elwood is a community with approximately 2,300 residents according to the 2010 United States Census. 453 Elwood citizens cast a vote in the most recent mayoral election held in April of 2017, according to records of the Will County Clerk. Thus, the Village had prepared to accommodate more than 25% of Elwood's entire population and a 40% larger turnout than the most recent mayoral general election.

The Village set up four rooms to conduct and observe the hearing. These included the following rooms with the respective capacities:

- Village Hall Board Room: 50
- Village Hall Community Room: 96
- Village Hall Basement: 335
- Village Hall Administrative Office: 150

The public hearing was conducted in the Board Room. As mentioned above, Village Hall was electronically wired to project sound and audio displays in each room where the public was located. In each room there were two monitors broadcasting the hearing. The monitors broadcasted video streams of the presentations as they occurred. The monitors simultaneously projected images of the demonstrative exhibits that were used in conjunction with the presentations. The interested parties who wanted to ask questions or provide testimony or evidence were ushered into the Board Room to be present in front of the commission and the applicant for zoning. For a more thorough explanation of the visual and audio setup, the Village has attached a summary provided by Absolute Production Services, the company providing the technical assistance.

Mr. Neil P. Olson
January 11, 2017
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MAHONEY, SILVERMAN & CROSS, LLC

The Village opened its door for the public to be seated at 6:00pm. At this time, there were approximately 200 attendees, with more arriving until the start of the hearing. The members of the public who entered Village Hall provided their contact information. It was at this point where it was explained that all attendees were allowed to sign in if they wished to participate in the hearing by asking questions or providing testimony and/or exhibiting. Those that wished to participate were provided a number and placed on a list to testify sequentially. Members of the public were first seated in the board room, then the community room, and then the basement.

At approximately 6:30pm, the basement of Village Hall appeared to have filled to capacity. At this time, Village staff members cleared out additional room in the administrative wing of Village Hall. This room provided standing room for an additional 150 attendees. It, too, was equipped with a monitor for viewing and listening to the hearing. At approximately 6:40pm, an additional 150 attendees were allowed access to this room. Also at this approximate time, members of the public were held outside the building. The police department was called to inform the public that the building was at or near capacity and efforts were currently being made to determine if there was additional seating to accommodate the overflow crowd.

It was determined that there were 42 additional seats available in the basement that were remaining between attendees who had left seats open between one another and other attendees who wished to remain standing as opposed to being seated. At approximately 6:55pm, 42 attendees were allowed to enter the building to occupy the additional seating. At 7:00pm, as the meeting started, speakers were placed outside to project the audio from the hearing. Attendees still waiting outside were allowed to stand by the windows of the Community Room where there were large monitors in place broadcasting the meeting. The police department again made announcements that there was a search for additional seating and accommodations for those still outside were trying to be made. It was at this time that residents began protesting that the Village had violated the Open Meetings Act and began to circulate a piece of paper to be sent to the State's Attorney's Office.

At approximately 7:10pm, it was determined that there were a few more seats open in the basement and enough room to accommodate a handful of people in the administrative wing. At this point, some attendees who had signed the petition outside had decided to leave. Remaining citizens were allowed into the building to the available locations to observe the meeting. Some of the citizens wished to remain outside to watch and listen to the meeting and were allowed to do so. Throughout the hearing, an officer from the Elwood Police Department continued to make announcements outside that there was additional available seating in the basement.

As outlined in Gervin v. Livingston County Board, 345 Ill. App. 3d 352 (4th Dist. 2003), public convenience is measured by a reasonableness standard—"a public body does not have to provide "absolute accessibility" but "reasonable accessibility." The Village expected a crowd of one hundred attendees and to watch a crowd of 600 attendees. The Village was able to arrange accommodations to 631 people outside and also placed several speakers outside when it became apparent that some people would be outside when the meeting started. The Village notes that the overwhelming majority of the comments constituting this Request for Review were initiated by people who were inside the public hearing. It should be noted that the meeting is still ongoing.

Mr. Neil P. Olsen
January 4, 2017
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MAHONEY, SILVERMAN & CROSS, LLC

Thus far, 66 interested persons have signed up to provide testimony, approximately ten of whom have been heard. Any person seeking an opportunity to testify who has not done so already still has the opportunity to participate and provide evidence.

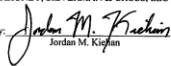
The case at hand presents a far different circumstance from the facts of Gierwin v. Livingston County Board where the County made no accommodation for the size of the crowd. On the contrary, the Village of Elwood went to extraordinary lengths to accommodate the public and provide a safe and comfortable environment to view, hear and participate in the meeting.

For the reasons stated above, the Village complied with section 2.01 of the Open Meetings Act in regards to the December 19, 2017 public hearing conducted at Village Hall. The hearing has been continued to January 11, 2018. Because of the complaints, and out of an abundance of caution that the same amount or more of the public attend the continuation of the hearing, the Village will be holding the continuation of the hearing at the Elwood Elementary School. This location should allow more attendees into the building with an approximate capacity of 1,300 people between two gymnasiums and cafeteria. Additionally, the Village has also arranged to have the hearing live streamed on the Village's website.

If you may need any more information or supporting documents in regards to this Response, please do not hesitate to contact me.

Very truly yours,

MAHONEY, SILVERMAN & CROSS, LLC

By: 
Jordan M. Klein

JMK
Enclosures

Open Meetings Act Request for Review Limiting Testimony

The Law Firm of
MAHONEY, SILVERMAN & CROSS, LLC

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February 14, 2018

Shannon Barnaby
Deputy Public Access Counselor
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500 South Second Street
Springfield, IL 62706

RE: OMA Requests for Review – 2018 PAC 51276; 2018 PAC 51279;
2018 PAC 51305; 2018 PAC 51320; 2018 PAC 51333; 2018 PAC 51334;
2018 PAC 51335; 2018 PAC 51337; 2018 PAC 51429

Dear Shannon Barnaby:

This letter is written in response to your correspondence dated January 31, 2018. It is the Village of Elwood's position that it complied with section 2.06(g) of the Open Meetings Act (5 ILCS 120/2.06(g)) in connection with the public hearing that was held at 7:00pm on January 17, 2018. Included with our Response is a transcript from the entire public hearing, as well as the ordinance adopted by the Village of Elwood in regards to the conduct of public hearings.

This Response will address the allegations as they are proposed in the second paragraph of your January 31, 2018 correspondence. It is true that the Commission provided a sign-up sheet for members of the public who wished to address the Commission at the December 19, 2017 and January 11, 2018 meetings. It is also true that those individuals were assigned a number and if time expired on those dates, those who had signed up were allowed to testify at the next meeting, including those who signed up at the January 11th meeting were allowed to speak at the January 17th meeting. The sign-up sheet was provided for organizational purposes. As mentioned in many of the requests, the number of people in attendance grew considerably smaller by the end of the second meeting. Because of the dwindling number of people in attendance at the second meeting, and the large number of people who had signed up but had yet to testify, the Commission did not provide a sign-up sheet at the beginning of the meeting on January 17th. However, the sign-up sheet was not a prerequisite to testify. The absence of the sign-up sheet was specifically addressed, and it was never stated that those who did not sign up would not be allowed to speak.

The comments from Attorney David Silverman that many of the requesters are referencing can be found at pages 394-396 of the hearing transcript included with this Response. For context, these comments were made at the beginning of the third meeting of this public hearing, after approximately nine (9) hours of testimony from the previous two hearing dates. Of those nine (9) hours of testimony, approximately six and a half (6.5) hours of testimony were -

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GRAND COUNTY OFFICE: 116 E. WASHINGTON STREET, MORRIS, IL 60450 (815) 513-5437
PLEASE REPLY TO JOLIET OFFICE

Shannon Barnaby
February 14, 2018
Page 2

MAHONEY, SILVERMAN & CROSS, LLC

JAMES A. MURPHY
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from interested parties opposing the proposed development. As mentioned above, the number of people in attendance by the end of the second meeting was noticeably reduced. As can be observed from the transcript included with this response, much of the testimony provided by interested parties, while important for the Commission to hear, was repetitious, focusing on the large size of the proposed development, as well as the adverse effects an increased number of trucks would have on the quality of life in and around the Village of Elwood. David Silverman addressed this issue at the beginning of the third meeting by requesting anyone wishing to testify to address new issues.

Furthermore, the atmosphere throughout the entire three nights of the meeting was raucous and fell short of proper decorum for an official public hearing. Members of the audience frequently shouted out approval or disapproval with testimony, as well as frequently interrupting the hearing by breaking into extended applause. This was addressed multiple times throughout the hearing to attempt to maintain orderly and civil behavior. During the first presenter's testimony on the second night of the public hearing, David Silverman admonished the crowd that although the hearing was in a gymnasium, it was not a pep rally, and the crowd needed to cooperate in order for everyone to be heard. The interested witness agreed, noting that the first meeting included audience members screaming out during the hearing. (Page 197 of the Transcript). This behavior continued through the second meeting, resulting in another admonishment from the Chairman at the beginning of the third meeting, reminding the crowd not to shout out, but instead to act like adults. (Page 396-397 of the Transcript).

Given the context, it was reasonable for the commission to start limiting the testimony after 97 interested parties were given the opportunity to testify. At this point in the meetings, the petitioner presented for approximately two and half (2.5) hours with the interested parties testifying for approximately ten (10) hours. At no point was anyone told they would not be allowed to testify. At no point was it announced that anyone who did not sign up in the first two meetings would be precluded from testifying. Once everyone who signed up to testify had been given the opportunity, the crowd was asked to raise their hands for people who still wanted to testify. (Page 542 of transcript).

When the question was posed to the audience who else wanted to testify, approximately ten (10) people raised their hands. David Silverman then asked everyone who raised their hands to step forward to testify. It appears from the transcript that nine (9) people actually came forward to testify. At this point, the two-minute time limit was applied to everyone equally, and was not content based. Contrary to some allegations, nobody was admonished not to ask questions. The only testimonial instruction or encouragement ever provided was to not repeat testimony and to provide testimony in areas that had not been mentioned. Taken into context with all of the other testimony, the last nine people to provide testimony revisited areas already explored and exhausted. By the time the nine additional speakers were finished testifying, the commission had heard approximately thirteen (13) hours of testimony, three (3) hours from the applicant and ten (10) from interested parties.

Section 2.06(g) of the Open Meetings Act provides that "any person shall be permitted an opportunity to address public officials under the rules established and recorded by the public

Shannon Barnaby
February 14, 2018
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MAHONEY, SILVERMAN & CROSS, LLC

body." Here, over the course of three meetings for this public hearing, everyone who wished to testify before the Commission was allowed to do so. Nobody was precluded from testifying. The rules concerning public hearings that Elwood adopted state: "The Chair may impose reasonable limitations on evidence or testimony presented by persons and parties barring repetitious, irrelevant or immaterial testimony. Time limits, if imposed, shall be fair, and equally administered." After approximately twelve and a half (12.5) hours of testimony, much of which was repetitious testimony, the Commission instituted a two-minute limitation for the final speakers wishing to testify. The Village's rule on public hearings allows this limitation and the limitation was uniformly applied to all of the final speakers regardless of content. The effect of instituting the time limit served the same purpose as limiting the testimony when a presenter began repeating previously stated testimony.

As Section 2.06(g) mandates, every person who wished to address the commission was allowed to do so. As allowed by the Village of Elwood's rules for public hearings, the Commission instituted reasonable time limitations after hearing approximately twelve and a half (12.5) hours of testimony. While everyone has the right to address the Commission during the public hearing, that right is not without limitations. In order to properly ascertain the reasonableness and fairness of the limitations imposed, the record of the public hearing should be considered in its entirety. When viewing the public hearing in its totality and taking into account the exhaustive and cumulative nature of the testimony, the time limitation instituted at the end of the third meeting was fair, reasonable, and equally applied to the final presenters. As can be ascertained from the transcript, none of the final presenters used their allotted time to enter into new areas of evidence.

For the reasons stated above, the Village of Elwood complied with section 2.06(g) of the Open Meetings Act as well as its own established rules concerning public hearings in regards to the January 17, 2018 public hearing. If you may need any more information or supporting documents in regards to this Response, please do not hesitate to contact me.

Very truly yours,

MAHONEY, SILVERMAN & CROSS, LLC

By: 
Jordan M. Kielian

JMK/abm
Enclosures