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STATE OF ILLINOIS

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January 23, 2018

All via electronic mail:

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Ms. Kristine DiDomenico	Mr. Nicholas Ruettiger	Mr. Charles D. Williams
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Mr. Rob Bogda	Dr. Shawn Walsh	Ms. Rebecca Kemp Robbins
Ms. Nichelle Tomalewicz	Ms. Amy Walsh	Mr. Drew Coldwater
Ms. Jill Bishop	Mr. Kevin Whaley	Ms. Jill Berscheid
Ms. Jillian Shanahan	Ms. Lindsay Fredin	Ms. Brandy Walsh
Ms. Lynn Stasiak	Ms. Jillian Deaville	Ms. Julia Baum-Coldwater
Ms. Tricia Maas	Ms. Kaitlyn Smith	
Mr. David J. Silverman Mahoney, Silverman & Cross, LLC	Mr. Jordan Kielan Mahoney, Silverman & Cross, LLC	

RE: OMA Requests for Review – 2017 PAC 50896, 50897, 50898, 50899,
50900, 50901, 50902, 50903, 50904, 50905, 50906, 50907, 50909, 50910, 50926, 50927,
50928, 50929, 50930, 50931, 50932, 50933, 50939, 50940, 50956, 50957, 50958, 50959,
50960, 50961, 50979, 51006, 51033; 2018 PAC 51046, 51116

To all concerned:

This determination is issued pursuant to section 3.5(e) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(e) (West 2016)). For the reasons that follow, the Public Access Bureau concludes that the Village of Elwood (Village) Planning and Zoning Commission (Commission) did not violate the requirements of OMA at its December 19, 2017, meeting.

Between the dates of December 19, 2017, and January 4, 2018, this office received a total of 37 Requests for Review alleging violations of OMA by the Commission at its the December 19, 2017, meeting, which was held at the Village Hall located at 401 East Mississippi Avenue in Elwood.¹ Although the Requests for Review provided various levels of detail, all the complaints alleged that the Village Hall had insufficient space to accommodate everyone who appeared to attend the meeting. According to requesters, approximately 50 to 100 people were prevented from entering the Village Hall because the building was at maximum capacity. Requesters alleged that the Village should have anticipated the large turnout because the Commission meeting concerned a controversial development project and they had questioned Village officials about the plan to accommodate attendees prior to the meeting. Requesters further alleged that the Village could have held the meeting at a local elementary school, which has a capacity of approximately 1,200. Several requesters also complained generally about the crowded conditions in the Village Hall, and, more specifically, that the television in one of the overflow rooms was small and not visible to many members of the public.

On December 28, 2017, this office sent counsel for the Village copies of the Requests for Reviews that had been received by that date and which complained exclusively about the December 19, 2017, Commission meeting. This office requested that the Village respond to the allegations in the Requests for Review and specifically address whether the December 19, 2017, Commission meeting complied with section 2.01 of OMA (5 ILCS 120/2.01 (West 2016), as amended by Public Act 100-477, effective September 8, 2017), which provides that all public meetings shall be held at places which are "convenient and open" to the public.

On January 4, 2018, counsel for the Village submitted a written answer to this office, which included an affidavit from the Village police chief concerning security and seating of attendees, and a description of the additional audio and visual equipment that was set up in each of the areas in the Village Hall. On January 5, 2018, this office forwarded copies of the Commission's answer to persons who had submitted a Request for Review; six requesters submitted replies to this office.

¹35 of the 37 Requests for Review contain the allegation that the meeting space was insufficient to accommodate persons who appeared for the meeting, and have been consolidated for determination in this letter. Two of the Requests for Review (2017 PAC 50967 and 2017 PAC 51034) made an additional allegation against the Village, which this office will address in a separate determination letter.

DETERMINATION

"It is the public policy of this State that public bodies exist to aid in the conduct of the people's business and that the people have a right to be informed as to the conduct of their business." 5 ILCS 120/1 (West 2016). "[C]itizens shall be given * * * the right to attend all meetings at which any business of a public body is discussed or acted upon in any way." 5 ILCS 120/1 (West 2016).

Section 2.01 of OMA provides that "[a]ll meetings required by this Act to be public shall be held at specified times and places which are convenient and open to the public." "By its plain terms, section 2.01 requires a venue that is not only 'open,' but 'convenient,' to the public." *Gerwin v. Livingston County Board*, 345 Ill. App. 3d 352, 359 (4th Dist. 2003). Thus, "an open meeting in an inconvenient place violates the Act." *Gerwin*, 345 Ill. App. 3d at 359.

In its answer, the Commission stated that for the December 19, 2017, meeting, it had created space for a total of 631 people in the Village Hall: 50 people in the board room; 96 people in the community room; 335 people in the basement; and standing room for 150 people in the administrative offices. The Commission also addressed the expected attendance for the meeting:

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 Reviews, 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. 435 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.^[2]

In replies to the Commission's answer, requesters alleged that it did not adequately consider various factors in connection with the location of the meeting. First, requesters alleged that prior Village meetings, although not Commission meetings, were attended by up to 400 people.³ Second, requesters alleged that greater public opposition to the development project was evident by media reporting, the number of people signing petitions, activity on social media, and lawn signs.⁴ Third, requesters alleged that the Commission should have anticipated the attendance of persons from neighboring communities affected by the project, such as Manhattan, Illinois.⁵ Lastly, as several of the Requests for Review had alleged, requesters alleged that members of the public had asked Village officials about the occupancy of the Village Hall prior to the meeting, thus placing them on notice that the space might be inadequate.

As referenced above, the leading Illinois case on meeting space accessibility is *Gerwin*. There, the plaintiffs appealed the dismissal of their lawsuit against a county board for allegedly violating section 2.01 of OMA by holding a meeting in an inconvenient place. *Gerwin*, 345 Ill. App. 3d at 353. In *Gerwin*, when a local landfill informed the county board that it wanted to expand, opponents collected 500 signatures on petitions and took out large advertisements in local and regional newspapers encouraging citizens to attend upcoming meetings. *Gerwin*, 345 Ill. App. 3d at 354. After an overflow crowd attended a meeting of a committee of the board, a board member asked whether the upcoming board meeting could be moved to a bigger room, but the meeting was not moved. *Gerwin*, 345 Ill. App. 3d at 355. The plaintiffs alleged that the landfill had asked supporters to arrive early for the board meeting to fill the meeting room, and they did so; only a few protesters were allowed entrance. *Gerwin*, 345 Ill. App. 3d at 356. About 100 members of the public were relegated to the area outside the meeting

²Letter from Jordan M. Kielian, Mahoney, Silverman & Cross, LLC, to Neil P. Olson, Deputy Public Access Counselor, Public Access Bureau (January 4, 2018), at 2.

³Requesters pointed to an "open house" about the development attended by approximately 400 people in June, 2017.

⁴See, e.g., E-mail from Julie Baum-Coldwater, to Neil Olson, [Deputy Public Access Counselor], [Public Access Bureau] (January 8, 2018) (alleging 1,375 people had signed petition against project by December 2, 2017 and 780 "Just Say No to Northpoint" yard signs had been distributed); E-mail from Tricia Maas to Neil Olson, [Deputy Public Access Counselor], [Public Access Bureau] (January 10, 2018) (alleging that Just Say No to Northpoint Facebook page has 1,277 likes and over 1,300 followers).

⁵7,051 people reside in Manhattan, Illinois, according to the 2010 United States Census. See United States Census Bureau, available at <https://www.census.gov/quickfacts/fact/table/manhattanillinois,US#viewtop>.

room, where no seating was available and it was uncomfortable, and the plaintiffs alleged that the Board "made no arrangements to accommodate them." *Gerwin*, 345 Ill. App. 3d at 356.

Addressing the meaning of "convenient," the court stated that "[a] meeting can be open in the sense that no one is prohibited from attending it, but it can be held in such an ill-suited, unaccommodating, unadvantageous place that members of the public, as a practical matter, would be deterred from attending it." *Gerwin*, 345 Ill. App. 3d at 361. Still, the court found that "[i]t would be unreasonable to suppose the legislature intended * * * that public bodies hold their meetings 'at such locations as are sufficient to accommodate *all* interested members of the public, such that they may see and hear all proceedings in reasonable comfort and safety.'" (Emphasis in original.) *Gerwin*, 345 Ill. App. 3d at 361. Accordingly, as quoted above, what section 2.01 requires instead is "reasonable accessibility." *Gerwin*, 345 Ill. App. 3d at 362 ("Renting a football stadium for public meetings might be inconvenient, or unadvantageous, to the public as a whole because of the cost. By the same token, holding public meetings in a small room might be inconvenient to the public because persons wanting to attend would have difficulty gaining admittance."). Because the reasonableness of the meeting space was a question of fact that needed to be explored, the court held that the trial court had improperly dismissed the plaintiffs' claims. *Gerwin*, 345 Ill. App. 3d at 362.

The parties agree that the subject matter to be discussed at the December 19, 2017, Commission meeting was contentious and numerous people were expected to attend the meeting. Where the parties disagree is whether the Commission should have anticipated that the Village Hall space would be insufficient to hold the attendees and explored alternative space, such as the local elementary school. Unlike in *Gerwin*, although prior meetings concerning the development project had been heavily attended, there was not a prior instance in which the full capacity of the Village Hall had been tested under similar circumstances. Although the Village Hall's stated capacity of 631 may not have provided optimum conditions for the number of attendees because it included standing room for 150, and because some persons allege that they had difficulty viewing the audiovisual broadcast of the meeting, it is nonetheless apparent that the Village made significant efforts to accommodate as many attendees as possible.

Here, the Commission set up speakers and monitors throughout the Village Hall to make sure that persons who wished to attend the hearing could be accommodated.⁶ The stated capacity of 631 equated to room for more than 200 persons in excess of the number of attendees at an open house concerning the development. Based on the information provided in this case, this office cannot conclude that holding the meeting at Village Hall did not provide reasonable

⁶In a previous Request for Review, this office concluded that a meeting was not reasonably accessible when the public body "did not explain why it did not attempt to use microphones or other technology so that those excluded from the meeting room could have at least heard the meeting, nor did it assert that such an option was unavailable." Ill. Att'y Gen. PAC Req. Rev. Ltr. 37216, 37291, 37970, issued February 23, 2016, at 7-8.

accessibility, considering the size of the communities involved and the Village's efforts that resulted in accommodation for several hundred more attendees than usual. Accordingly, this office concludes that the Commission did not violate section 2.01 of OMA at its December 19, 2017, meeting.⁷

This office further notes that several requesters alleged violations of the fire code or other safety codes in connection with the December 19, 2017, meeting. The Public Access Counselor's authority is limited to resolving disputes concerning the Freedom of Information Act (FOIA) (5 ILCS 140/1 *et seq.* (West 2016)) and OMA. 15 ILCS 205/7(c) (West 2016). Therefore, these allegations are not subject to review by this office.

The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. This letter serves to close this matter. If you have any question, please contact me at (217) 782-9078.

Very truly yours,



NEIL P. OLSON
Deputy Public Access Counselor
Assistant Attorney General, Public Access Bureau

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⁷We have been advised that the Commission subsequently scheduled two continuations of the Commission hearing, on January 11, 2018, and January 17, 2018, at the larger meeting space at the local elementary school, as suggested by many requesters, and arranged to have broadcasts of the meetings streamed on the Village's website.

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