



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

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May 24, 2024

Via electronic mail



Via electronic mail

The Honorable David Johnson
Chair, Planning and Zoning Board of Appeals
City of Blue Island
13051 Greenwood Avenue
Blue Island, Illinois 60406
c/o fbilotto@cityofblueisland.org

RE: OMA Request for Review – 2023 PAC 78515; 2023 PAC 79224

Dear [REDACTED] and Mr. Johnson:

This determination is issued pursuant to section 3.5(e) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(e) (West 2022)).

BACKGROUND

On October 11, 2023, [REDACTED] submitted a Request for Review (2023 PAC 78515) to the Public Access Bureau alleging that the City of Blue Island (City) Planning and Zoning Board of Appeals (Board) violated OMA at its October 5, 2023, meeting by requiring members of the public to be sworn in before providing public comment on a redevelopment plan for a property that formerly housed a hospital. She asserted that the Board's attorney "told the crowd that under the law in public hearing, people who made public comments were considered to be witnesses who were giving testimony in a courtroom and therefore were required to be sworn in."¹ [REDACTED] contended that this announcement deterred members of

¹Letter from [REDACTED] to Public Access Counselor, Office of the Attorney General (undated).

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the public from participating in public comment, asserting that "a group of people simply got up and left. Others were sworn in and decided not to speak and a group of people were sworn in by the attorney and were allowed to speak, with [the Board's attorney] asking for their names and addresses before they could speak."²

On December 5, 2023, [REDACTED] submitted a Request for Review (2023 PAC 79224) alleging that the Board also violated OMA at its November 2, 2023, meeting by similarly requiring a member of the public to be sworn in before providing public comment on a proposed amendment to the City's zoning code:

When public comment was called, a citizen came forward to speak, the Board attorney told the citizen that he had to be sworn in * * * as he was giving legal testimony to the Board. The citizen said he was not testifying nor wanted to be sworn in, but only to give comment on an issue to the board. The Board Attorney told the citizen that he was not allowed to give any comment of any kind at the hearing without being sworn in.^[3]

On October 27, 2023, this office forwarded a copy of 2023 PAC 78515 to the Board and asked it to provide this office with copies of the October 5, 2023, meeting agenda and minutes, together with a written response to [REDACTED] OMA allegation. On November 21, 2023, this office received the requested materials. On November 28, 2023, this office forwarded a copy of the Board's response to [REDACTED] she replied on December 5, 2023.

On December 14, 2023, this office forwarded a copy of 2023 PAC 79224 to the Board and asked it to provide the same materials with respect to the November 2, 2023, meeting. On January 18, 2024, this office received those materials. On January 22, 2024, this office forwarded a copy of the Board's response to [REDACTED] she replied on January 30, 2024.

DETERMINATION

Section 2.06(g) of OMA (5 ILCS 120/2.06(g) (West 2022)) provides that "[a]ny person shall be permitted an opportunity to address public officials under the rules established and recorded by the public body." This provision "requires that all public bodies subject to the Act provide an opportunity for members of the public to address public officials at open meetings." Ill. Att'y Gen. Pub. Acc. Op. No. 14-012, issued September 30, 2014, at 5. A public

²Letter from [REDACTED] to Public Access Counselor, Office of the Attorney General (undated).

³Letter from [REDACTED] to Public Access Counselor, Office of the Attorney General (undated).

body may restrict public comment only pursuant to its established and recorded rules, which must tend to accommodate, rather than unreasonably restrict, the right to address public officials. Ill. Att'y Gen. Pub. Acc. Op. No. 14-012, at 6.

In response to 2023 PAC 78515, the Board did not dispute that its counsel made a statement at the October 5, 2023, meeting concerning the swearing in of witnesses but asserted that this statement was legally correct as related to public hearings. The Board explained:

A public hearing on a zoning matter is a quasi-judicial proceeding during which the Board of Appeals collects evidence on the application before it. Such hearings are commonly done during properly noticed public meetings pursuant to OMA.

Contrary to those who speak during the public-comment portion of the meeting itself, citizens who address the Board of Appeals after a public *hearing* has been opened are sworn in as witnesses prior to speaking. This is so the applicant and any other interested parties have a chance to respond to and/or rebut any citizen testimony and build an official record for appeal.^[4]

According to the Board, public hearings are conducted in accordance with the zoning provisions of the Municipal Code (65 ILCS 5/11-13-1.1 (West 2022)) and the City's code of ordinances, which provide that "[c]itizens who wish to speak during such hearings must testify under oath as witnesses and are sworn in prior to giving testimony."⁵ The Board stated that it started the October 5, 2023, meeting at 7:06 p.m. and "opened the floor to public comment pursuant to its adopted Rules for Public Comment[.]"⁶ The Board asserted that members of the public could speak on any items in the agenda, including special-use applications, during this session. At 7:18 p.m., within the meeting, the Board opened the public hearing on the application involving the former hospital and heard sworn testimony from the applicant and members of the public. The Board contended that every person "who wanted to speak during the public hearing had the

⁴Letter from Sara M. Gallagher, Montana Welch LLC, to Teresa Lim, Supervising Attorney, Public Access Bureau, Office of the Attorney General (November 21, 2023), at 1.

⁵Letter from Sara M. Gallagher, Montana Welch LLC, to Teresa Lim, Supervising Attorney, Public Access Bureau, Office of the Attorney General (November 21, 2023), at 2.

⁶Letter from Sara M. Gallagher, Montana Welch LLC, to Teresa Lim, Supervising Attorney, Public Access Bureau, Office of the Attorney General (November 21, 2023), at 2.

opportunity to do so, and ultimately, 10 citizens were individually sworn in to submit testimony."⁷

In response to 2023 PAC 79224, the Board presented the same argument, asserting that it provided an opportunity for public comment at the start of the November 2, 2023, meeting and later conducted the hearing in question in accordance with provisions of the Municipal Code and City ordinances governing public hearings. The Board acknowledged that one individual declined to be sworn in, but contended that it "closed the Public Hearing" and gave the individual "another opportunity to address the Board[.]" aside from the designated public comment session that preceded the opening of the public hearing.⁸

In reply to the Board's answers, [REDACTED] argued that section 11-13-3(e) of the Municipal Code (65 ILCS 5/11-13-3(e) (West 2022)) "clearly states that all meetings of the PZBA are public meetings[.]" and that OMA and the City's public comment ordinance "do not require speech to be sworn testimony[.]"⁹ She further argued that the Municipal Code provisions cited by the Board "apply to witnesses that have been called or subpoenaed by the property owners affected by the special use permit. None of the members of the public wishing to speak had been called or subpoenaed as witnesses."¹⁰

It is undisputed that the Board asked individuals to be sworn in before speaking during the public hearing portions of the October 5, 2023, and November 2, 2023, meetings, but this office's review of the meetings' minutes confirmed that the Board held a designated public comment session after roll call at the two meetings. The minutes document that during the two meetings, members of the public either spoke during the designated public comment session or provided testimony during the public hearings. Neither OMA nor the Board's public comment rules require members of the public to be sworn in before addressing the members of the Board. There is no indication, however, that the Board required individuals to be sworn in before speaking during the designated public comment sessions.

With respect to the November 2, 2023, meeting, the minutes reflect that five members of the public spoke on various topics during the designated public comment session. The Board asserted that the individual at issue was provided opportunities to speak during this

⁷Letter from Sara M. Gallagher, Montana Welch LLC, to Teresa Lim, Supervising Attorney, Public Access Bureau, Office of the Attorney General (November 21, 2023), at 3.

⁸Letter from Sara M. Gallagher, Montana Welch LLC, to Teresa Lim, Supervising Attorney, Public Access Bureau, Office of the Attorney General (January 18, 2024), at 3.

⁹Letter from [REDACTED] to [Public Access Bureau] (undated).

¹⁰Letter from [REDACTED] to [Public Access Bureau] (undated).

session and after the conclusion of the public hearing.¹¹ The available information indicates that the individual who declined to be sworn in was afforded other opportunities, aside from the public hearing, to exercise his statutory right to address public officials. Accordingly, this office concludes that the Board did not violate section 2.06(g) of OMA at the November 2, 2023, meeting.

With respect to the October 5, 2023, meeting, ██████████ asserted in her reply that the Board held a separate public comment session, but "they also told the public not to address the issue of the old Metro South Hospital at that time. They said the Hospital development would be discussed later in the meeting at a public hearing. That discouraged dozens of people from making comments at that time."¹² This office recognizes ██████████ concern that such statements could have misled or deterred members of the public from speaking during the designated public comment session. However, the draft October 5, 2023, meeting minutes provided for this office's confidential review indicate that more than ten individuals nonetheless spoke during the hearing, and the individuals freely expressed their opinions—some expressed their support for the proposed redevelopment plan, while others were critical of it. One individual declined to take an oath but did not have comments on the application; instead, this individual commented on the swearing-in requirement. Many of the individuals also asked questions about the redevelopment plan, and the applicants and their representatives provided a response. Members of the public then provided additional public testimony.

Based on the available information, this office is unable to determine that members of the public were prevented or deterred from addressing the Board concerning the redevelopment plan. Although ██████████ observed some individuals leaving after the Board attorney's announcement concerning the swearing in of witnesses, it is not clear¹³ that those individuals left because they had been asked or encouraged to wait until the public hearing to speak and were unwilling to do so under oath. It appears that a number of individuals stayed for the public hearing and had questions regarding the proposed redevelopment plan. The available information suggests that the public hearing provided a chance for the applicant to respond specifically to questions and comments from the public, which would not have been provided

¹¹The Public Access Counselor's authority to resolve disputes is limited to alleged violations of OMA and the Freedom of Information Act (5 ILCS 140/1 *et seq.* (West 2022). 15 ILCS 205/7(c)(3) (West 2022). Therefore, this office cannot address whether other state laws or municipal ordinances required sworn testimony during the public hearing portions of the meetings.

¹²Letter from ██████████ to [Public Access Bureau] (undated).

¹³The minutes reflect that the hearing at issue took place after another public hearing on a separate matter had concluded.

[REDACTED]
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during the designated public comment session.¹⁴ Under these circumstances, this office is unable to conclude that Board improperly restricted members of the public from addressing the Board at the October 5, 2023, meeting in violation of section 2.06(g) of OMA.

Although the Municipal Code authorizes municipalities to adopt "rules relative to the time and manner in which hearing officers are designated to conduct public hearings and rules governing the manner in which such hearings are conducted[,]"¹⁵ those rules are distinct from established and recorded rules governing public comment under OMA. The Board should be mindful that a rule requiring individuals to be sworn in to testify during public hearings is not applicable to the separate portion of Board hearings in which members of the public have an opportunity to comment under section 2.06(g) of OMA, even if the speaker wishes to comment on the topic of the public hearing.

The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. This letter shall serve to close this matter. If you have any questions, please contact me at the Chicago address listed on the first page of this letter.

Very truly yours,

[REDACTED]
TERESA LIM
Supervising Attorney
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cc: *Via electronic mail*
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¹⁴The Public Access Bureau has previously determined that the right to comment during an open meeting includes the right to ask questions of public officials, notwithstanding that OMA does not require public officials to respond to questions or comments. *See, for example*, Ill. Att'y Gen. PAC Req. Rev. Ltr. 35858, issued October 20, 2015, at 2.

¹⁵65 ILCS 5/11-14.1(D) (West 2022).