HISTORIC PRESERVATION COMMISSION OFFICIAL BYLAWS

Date of Commission Approval: September 7, 2005

Article I. Purpose

It is the purpose of these bylaws to establish a guide for the operation of the Historic Preservation Commission. These bylaws are supplemental to the provisions of Section XII-3 of the Urbana Zoning Ordinance, which state the Historic Preservation Commission shall adopt rules necessary to the conduct of its affairs and in keeping with the provisions of the Urbana Zoning Ordinance.

Article II. Powers and Duties

The Urbana Historic Preservation Commission shall have the powers and duties outlined in Section XII-3F of the Urbana Zoning Ordinance.

Article III. Membership, Officers, and Their Duties

The membership, officers, their terms and responsibilities are governed by Section XII-3 of the Urbana Zoning Ordinance.

Article IV. Meetings

1. Regular meetings of the Historic Preservation Commission (herein after "Commission") shall be determined by the Commission. There shall be a minimum of four (4) meetings per year.

   If a regular meeting date is a holiday recognized by the City of Urbana, the Commission will not meet on that date. In such a case, the Chairperson may designate an alternative meeting date, provided that public notice is given in accordance with the requirements of the Open Meetings Act (5 ILCS 120/1 et. seq.).

2. Continued meetings shall be at the time and place fixed in the motion for adjournment should the business of the Commission not be completed.

3. All meetings shall be held in the City Council Chambers, City Building, 400 S. Vine Street, Urbana, Illinois, unless special conditions require that the meeting take place at an alternate location.

4. The Secretary shall give at least forty-eight (48) hours notice of all meetings to all members, the public, and such media as required by law.

5. Minutes of all meetings shall be taken in accordance with the requirements of the Open Meetings Act (5 ILCS 120/1 et. seq.).

Attendance

Attendance shall be required as outlined in Section XII-3 E of the Historic Preservation Ordinance.

Quorum

1. A quorum of the Preservation Commission shall consist of a majority of the members of the Preservation Commission then holding office but not less than three.

2. The Chair is a voting member of the Commission and shall vote on all matters except those on which a conflict of interest is declared. If the Chair declares a conflict of interest on any matter before the Commission, the Chair shall step down and the Vice-Chair shall take over as Chair of the Meeting. The Chair shall not resume his/her duties until the Commission finishes business on the matter on which the conflict of interest was declared.

   Each Commissioner has a duty to vote "yes" or "no" on all matters put to a vote. Abstentions, if for reasons of conflict of interest shall not be counted as either a "yes" or a "no" vote and such member so abstaining shall not be counted in determining the total of which a majority is required. Each Commissioner shall have the right to abstain by reason of a stated conflict of interest based on his or her own assessment of the existence of such conflict of interest and the Commission shall have no right to overrule such Commissioner's determination. The Commissioner need not reveal the substance of the reason that he or she feels they have a conflict of interest.

   If a Commissioner abstains but does not announce that such an abstention is based on a conflict of interest, then such abstention shall be recorded as abstained and the Chair shall rule that such abstention "goes with the majority" of those votes actually cast as a "yes" or "no" vote.

Legal Counsel

The City Attorney of the City of Urbana or the City Attorney's designee shall be the legal counsel or the Historic Preservation Commission.

Article V. Order of Business Agenda

The agenda for each meeting and the order of business shall be as follows:

1. Call to Order, Roll Call, and Declaration of Quorum
2. Changes to the Agenda
3. Approval of Previous Minutes
4. Written Communications
5. Continued Public Hearings
6. Old Business
7. New Public Hearings
8. New Business
9. Audience Participation
10. Staff Report
11. Study Session
12. Adjournment

The order of business and the agenda may be amended upon the motion and second of any Commissioner with consent of a majority of Commissioners present at the meeting.

Article VI. Procedure for Hearings

1. The format for each public hearing shall be as follows unless otherwise required by law:

    a. Officially open hearing.
    b. Presentation by staff, committee or commission.
    c. Presentation by the nominator.
    d. Presentation by the owner.
    e. Presentation by proponents.
    f. Presentation by opponents.
    g. Commission questions.
    h. Commission discussion.
    i. Commission vote.
    j. Close hearing.

The Commission may continue any case due to insufficient information provided by the petitioner in order for City Staff to make a recommendation or the Commission to make a decision. The Commission may also continue any case due to the absence of the petitioner at the meeting.

Article VII. Determinations

Motions and Procedures

Except as otherwise expressly provided in these Rules and Bylaws, motions and related miscellaneous procedures in Commission meetings shall be governed by the Robert's Rules of Order.

Article VIII. Records

Five Year Report

In accordance with the Urbana City Council a resolution, the Secretary of the Historic Preservation Commission will provide a report on the Ordinance's implementation to the Urbana City Council on July 20, 2003, five years from the date of the adoption of the Ordinance on July 20, 1998. The report shall include the following:

1. The number and location of applications for historic district or landmark designation;
2. The number and location of historic districts approved since the adoption of the Historic Preservation Ordinance;
3. The number and location of historic landmarks designated since the adoption of the Historic Preservation Ordinance;
4. The number of protests filed with the City Clerk on any designations.
5. Update the City Council on survey or educational work conducted by the Historic Preservation Commission; and
6. Any other information deemed necessary by the City Council or the Historic Preservation Commission.

Article IX. General Provisions

Commissioners shall not communicate with other commissioners outside of Historic Preservation Commission meetings for the purpose of influencing such commissioners to adopt a position on a matter then pending, or reasonably expected to come before the Commission.

Article X. Amendment of Rules

These by-laws maybe amended by an affirmative vote of not less than five (5) members of the Commission. Any such amendment becomes effective at the next regular meeting.

CITY OF URBANA

PLAN COMMISSION BY-LAWS

(ADOPTED 7-21-05)

Article I. Purpose

It is the purpose of these bylaws to establish a guide for the operation of the Urbana Plan Commission. These bylaws are supplemental to the provisions of Section XI-2 of the Zoning Ordinance, which states the Plan Commission shall adopt rules necessary to the conduct of its affairs and in keeping with the provisions of the Urbana Zoning Ordinance.

Article II. Powers and Duties

The Urbana Plan Commission shall have the powers and duties outlined in Sec. XI-2 of the Urbana Zoning Ordinance.

Article III. Membership, Officers and Their Duties

1. The membership, officers, their terms and responsibilities are governed by Chapter 18, Article II, Sec. 18-17 of the Urbana Code of Ordinances.

2. When the Chairperson is absent, the Commission shall elect an Acting Chairperson from among the members present.

3. When a member of the Urbana Plan Commission has missed three consecutive regularly scheduled meetings without notifying the Secretary or Chairperson at least 24 hours in advance, the Chairperson will request staff to prepare a letter notifying the Mayor of the individual member's absence. The Mayor may then request the individual to resign. If the Mayor receives no response from the member prior to the meeting time of the next regularly scheduled meeting, the Mayor may remove the member for cause.

4. A member of the Commission who notifies the Chairperson or Secretary of the Commission of his or her absence as outlined above, shall be listed as a "Excused" in the minutes of that meeting.

5. The City Planner, or his/her representative, shall serve as Secretary to the Plan Commission in accordance with the Urbana Zoning Ordinance (Section XI-2.B.8).

Article IV. Meetings

1. Regular meetings shall be held on Thursdays following the first and third Mondays of each month at 7:30 p.m. in the Urbana City Council Chambers, 400 S. Vine Street, Urbana, Illinois or at an alternative location announced at a prior regular meeting of the Commission.

   If a regular meeting date is a City recognized holiday, the Commission will not meet on that date. In such a case, the Chairperson may designate an alternative meeting date, provided that public notice is given in accordance with the requirements of the Urbana Zoning Ordinance (Section XI-2.B, Section XI-10) and the Open Meetings Act.

2. Regular meetings may be cancelled, postponed, continued or closed by the Chairperson, with notification given to all members in accordance with the requirements of the Urbana Zoning Ordinance (Section XI-2.B, Section XI-10). When a meeting is cancelled, a staff representative shall be present at the date, time, and place of the cancelled meeting, and shall announce the date, time, and place of the continued meeting. The staff person is authorized on behalf of the Plan Commission to be present and give such notice. Additionally, notice of said information shall be posted in at least two (2) public places in or near the cancelled meeting site, and the secretary shall execute an affidavit of such fact and enter the affidavit along with the notice of continuance in the records of the Plan Commission.

3. Special meetings may be called by the Chairperson at his or her discretion, or upon the request of two (2) or more members, provided that public notice is given in accordance with the requirements of the Urbana Zoning Ordinance (Section XI-2.B, Section XI-10) and the Open Meetings Act.

4. All meetings shall be open to the public, except for those meetings which may be closed in compliance with the Open Meetings Act.

5. Public hearings may be held by less than a quorum of the Commission, however, such public hearings shall be continued until a quorum is present. No case shall be decided without a quorum present. When a vote is taken, a member of the Commission may vote on a matter for which he/she was not present to hear all evidence.

6. The Secretary of the Plan Commission shall be responsible for proper notification of a public hearing as required in Section XI-10 of the Urbana Zoning Ordinance, and notification of all meetings must be in compliance with the Open Meetings Act.

7. The Plan Commission shall review the Plan Commission by-laws at least once annually at a regular meeting the Chairperson designates.

Article V. Order of Business

1. All meetings of the Commission shall proceed as follows unless a majority of the Plan Commission members present vote to alter the order of business. Changes to the agenda that include new business items shall not be added unless properly noticed per the Open Meetings Act:

   A. Call to Order, Roll Call and Declaration of Quorum.

   B. Changes to the Agenda

   C. Approval of Minutes of Previous Meeting(s).

   D. Communications

   E. Continued Public Hearings

   F. Old Business

   G. New Public Hearings

   H. New Business

   I. Audience Participation

   J. Staff Report

   K. Study Session

   L. Adjournment of Meeting

2. Continuance may be granted to a specific time and date, at the discretion of the Commission, for good cause shown, at the request of staff or any interested party who has entered his/her appearance as follows:

   A. New cases appearing for the first time on the agenda.

   B. Continued Cases: All cases which have previously appeared on the agenda of the Commission constitute continued cases. A request for the further continuance of a case will be considered upon application by the petitioner or the petitioner's representative at the time the case is called, and upon showing:

      1) That the petitioner has given reasonable notice in writing to all persons who have filed an appearance in the matter; and

2) That the petitioner will be unable to proceed with his evidence at this hearing.

C. Continuance may be granted to a specific time and date, at the discretion of the Chairperson, for good cause shown, upon any case before the Commission, if such request is made by staff or petitioner in advance of the meeting. If continuance of a case in advance of the hearing is determined by the Chairperson to make the meeting unnecessary and if no other cases are on the agenda, the Chairperson may cancel the meeting. Staff may then notify all interested parties of the cancellation. If the meeting is cancelled after public notice of any case has been given, the staff shall appear at the designated meeting location at the scheduled time of the meeting to announce the continuance.

3. Failure of a petitioner to appear:

A. The Chairperson may entertain a motion to continue the case to the next regularly scheduled meeting or dismiss the case for failure of the petitioner to appear. If the motion to dismiss carries, the case shall be dismissed.

B. In cases which are continued or dismissed for failure of the petitioner to appear, the Secretary of the Commission will furnish the petitioner written notice of said action.

C. The petitioner shall have seven (7) days from the date of the notice of a dismissal to apply for reinstatement of the case. In such cases, the petitioner must file a written request with the Secretary for reinstatement. Reinstatement shall be at the discretion of the Chairperson for good cause shown, and upon payment of the appropriate fee by the petitioner.

D. In all cases reinstated in the above described manner, the case will be docketed and re-advertised in the usual manner prescribed for new cases.

4. No matter requiring a vote will be placed upon the regular meeting agenda unless the Secretary or his/her designee receives it at least (20) days prior to the regular meeting or unless the Secretary or his/her designee determine sufficient information has been submitted and there is good cause justifying the matter being placed on the agenda in less than twenty (20) days. Items may be added to the agenda at a regular meeting upon the unanimous vote of the members of the Commission who are present and voting. Any cases, however, which are subject to public notice published in a newspaper or other notice requirements of the Urbana Zoning Ordinance are subject to the requirements of the Ordinance rather than this section.

5. Any person addressing the Plan Commission during "Audience Participation" shall be allowed five (5) minutes to speak.

It shall be the prerogative of the Chairperson to extend the five (5) minute time limit or

if the Chairperson does not enforce or extend the time limit, the extension shall be decided without debate by a motion approved by the majority vote of the members of the Commission present.

Article VI. Procedure for Hearings

The Plan Commission shall use the following procedure for Public Hearings.

1. The Chairperson shall declare the public hearing open. He/she shall state the case number and nature of the request. The Chairperson shall then outline the procedure to be followed, stating when the petitioner may present evidence, when the objectors may present evidence, and the procedure for cross-examination. In addition, the Chairperson shall state the Plan Commission's authority regarding the case and whether or not the Commission has final authority on the matter.

2. Staff presents summary of the case.

3. The petitioner or his/her representative may make a statement outlining the nature of his/her request prior to introducing evidence.

4. The petitioner shall present evidence.

5. Other Proponents of the request may be heard.

6. Opponents of the request shall present evidence. Opponents may include persons not in favor of the petition as proposed, as determined by the Chairperson. Opponents shall be allowed a reasonable opportunity for relevant questioning (i.e., "cross-examination") of the petitioner. If the petitioner is unable or unwilling to respond to the relevant questions, the chairperson shall direct the Recording Secretary to take note of such in the minutes of the Plan Commission.

7. Others may be heard.

8. Additional comments by City Planner or City staff may be allowed for clarification or in response to new evidence.

9. The petitioner may rebut but not introduce new evidence.

10. The opponents may rebut but not introduce new evidence.

11. The petitioner may present a summary of his/her petition.

12. Questions from the Commission may be directed at anytime to the applicant, staff or public to clarify evidence presented in the hearing.

13. The Commission shall not be bound by strict rules of evidence. The Commission may exclude irrelevant, immaterial, incompetent or repetitious testimony or other evidence.

14. A petitioner or opponent, or their agent or attorney may submit a list of persons favoring or opposing the application. Such a list will be accepted as an exhibit if it contains a brief statement of the position of the persons favoring or opposing the request together with the signatures and addresses of the persons subscribing to such statement. Said list shall be admissible as evidence if it is received by the Secretary prior to or during the public hearing on the request.

15. The Chairperson may require advance registration of opponents wishing to ask questions of the petitioner, including identification of the opponents' area of interest in questioning and identification of which witnesses will be subject to the questioning. Advance registration may be by means of speaker cards to be submitted prior to or at the public hearing.

16. The Chairperson shall rule on all questions relating to the admissibility of evidence. The Chairperson's determination may, however, be overruled by a majority vote of the Commissioners present.

17. The petitioners and opponents should present all evidence they possess concerning the request at the initial phase of the public hearing. Written material from the petitioner or opponents will be accepted by the Secretary for distribution to the Commission until the close of the public hearing.

18. The Chairperson shall close the public hearing only after the Plan Commission has taken action on the case. The public hearing may be reopened at the same meeting prior to the Commission's action on the request at the discretion of the Chairperson or on a motion approved by the majority of the Commissioners present and voting.

Article VII. Determinations

1. The Commission shall conduct its votes in public session.

2. All determinations of the Commission shall be made at a public meeting by motion made and seconded. The Chairperson shall then call for discussion on the motion. After discussion, the Chairperson shall call for the roll call vote, polled by the Secretary or his/her designee. The roll call for votes shall be alternated at each meeting so that the first name called at one meeting will be the last name called at the next meeting. Any Commissioner may comment on his/her vote for incorporation into the minutes.

3. Motions shall include explicitly, or by reference, the findings of fact and shall state

explicitly, or by reference, the reason for the findings of the Commission. If conditions are imposed in the recommendation for a special use or development waiver, such conditions shall be explicitly included in the motion.

4. No matter shall be considered approved by the Commission except upon affirmative vote by a majority of the members of the Commission present.

5. An abstention vote shall be recorded as "abstained" and shall not be counted as either an "aye" or "nay". The Chairperson shall not rule that the abstention vote be recorded with the majority or minority.

6. The Secretary shall notify the petitioner of the Commission's determination in writing through the U.S. Mail.

Article VIII. Records

1. A file of materials and determinations relating to each case shall be kept by the Secretary as part of the records of the Commission. Said records shall be kept at the office of the Commission as designated in Article X of these by-laws.

2. The Secretary or his/her designee shall prepare minutes of every regular or special meeting. The Plan Commission minutes shall be kept as part of the official records of the Plan Commission and approved by an affirmative vote of the majority of the members of the Plan Commission present.

3. All records of the Commission shall be public records subject to release in accordance with the process outlined by the Freedom of Information Act.

Article IX. Amendment of Rules

1. These rules may be amended by an affirmative vote of the majority of the members of the Commission present. The proposed amendment must be presented in writing at a regular or special meeting preceding the meeting at which the vote is taken.

2. These rules may be suspended for due cause upon the affirmative vote of a simple majority of the Commissioners present.

Article X. General Provisions

1. Any member of the Plan Commission who has a conflict of interest in a matter before the Commission shall not participate in the discussion or vote thereon. Conflicts of interest may arise from various scenarios including, but not limited to, financial,

ownership or property interests, conflicts with employment or appointments, or conflicts with a publicly stated opinion on a pending application.

2. If it is determined that a Plan Commissioner has a conflict of interest, they must state so and remove themselves from the discussion and from the table while the matter is resolved. Such action shall not affect the quorum established to conduct the meeting. The Plan Commissioner's recusal will be considered an abstention and shall not be counted as either an aye or a nay vote. Further, the abstaining member shall not be counted in determining the total number of votes required for approval of a matter before the commission, any statute, ordinance or rule of parliamentary procedure to the contrary notwithstanding. (see by-law VII-4).

3. A Commissioner that has publicly stated a position in the press, in a public forum or on a public petition in regards to a case prior to that case being voted on by the Commission shall be deemed a conflict of interest. In this event, the Commissioner shall indicate a conflict of interest as described in Article X.1 above and shall recuse themselves from participating in that case.

4. The Chairperson, after consulting with the City Planner and the City Attorney, shall determine if a by-law rule has been violated for the purposes of determining a conflict of interest. The determination of the Chairperson is subject to being over-ruled by the Commission.

5. The City Attorney shall be consulted in cases where there are questions regarding powers of the Commission.

6. The office of the Commission shall be located in the office of the Urbana City Planner.

7. *Robert's Rules of Order* shall be the official rules of the Commission except when they conflict with the officially adopted by-laws, in which case, the by-laws shall govern.

8. Commissioners shall not communicate with other commissioners outside of Plan Commission meetings for the purpose of influencing such commissioners to adopt a position on a matter then pending, or reasonably expected to come before the Commission.

The *Klaeren* Case: Entering a Brave New World of Illinois Zoning Law

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ABSTRACT: *The Illinois Supreme Court recently handed down its decision in People ex rel. Klaeren v. Village of Lisle, Case No. 90537 (10/18/02). The decision not only affects the way local governments conduct public hearings on zoning matters, but it also fundamentally changes the way that Illinois courts have analyzed certain local zoning decisions for more than 40 years. The significance of this decision and its impacts on both local governments and courts needs to be understood in the context of the case.*

A. Introduction

On October 18, 2002, few local government officials may have felt the tremors, but the Illinois Supreme Court's decision that day dramatically shook up the well-established procedures for granting certain site-specific zoning relief in Illinois. In *People ex rel. Klaeren v. Village of Lisle*,[1] the Supreme Court affirmed a decision of the Second District Appellate Court[2] holding that "interested parties [have] the right to cross-examine adverse witnesses" as part of a special use proceeding. In reaching this decision, however, the Court overturned more than 40 years of precedent by ruling that "municipal bodies act in administrative or quasi-judicial capacities when those bodies conduct zoning hearings concerning a special use petition."[3]

The *Klaeren* case may ultimately prove to be yet another example of bad facts making bad law. Although in some respects the Supreme Court corrected some of the troubling aspects of the Appellate Court's decision, a close review of the case, its facts, and the Supreme Court's ultimate ruling suggests that municipalities and courts have even more trouble in store as they try to respond to the decision itself and its wide-ranging implications.

B. The Dispute

In *Klaeren*, landowners living adjacent to a proposed Meijer development challenged the procedure by which the Village of Lisle approved the development. Specifically, Lisle used the uncommon procedure of a joint hearing of its zoning board of appeals, plan commission and board of trustees on the proposed development to hear evidence on the requested annexation, annexation agreement, rezoning and special use permits for a planned development and for a gas station. Over 500 people attended the public hearing. The mayor of Lisle presided at the hearing, allowing the petitioners to make a full presentation of their case but setting a two-minute time limit on all speakers from the audience – a limitation that prevented a citizen group from making a prepared presentation on behalf of 2,000 residents who had signed a petition. The mayor also barred citizens from presenting poster board exhibits as evidence. Moreover, the mayor prohibited any of the citizens from cross-examining any of the petitioner's witnesses.[4]

After the joint hearing was adjourned, the Plan Commission and Zoning Board of Appeals each considered the evidence relating to the requested planned development and gas station special use permits, and both of these bodies ultimately recommended that the special use permits should be denied.[5] Nevertheless, the Village Board in Lisle decided not to follow the recommendations of the Plan Commission and Zoning Board of Appeals, and it approved the annexation and zoning petitions needed to permit the Meijer development to proceed.

The plaintiffs, disappointed residents of Lisle, filed their lawsuit to prevent the Meijer development

from proceeding. The trial court held a preliminary injunction hearing at which at least ten witnesses testified to matters both within and without the public hearing record. Following the hearing, the trial court granted a preliminary injunction from which the case was appealed.[6]

Significantly, in filing suit, the plaintiffs did not challenge the substance of Lisle's zoning decisions. Rather, the basis for their zoning challenge was that the public hearing process did not afford them an adequate opportunity to be heard.[7] Although the trial court, appellate court and Supreme Court properly criticized the procedures that Lisle employed at the hearing, one must question whether the process was fundamentally defective in light of the fact that the hearing bodies considering the special use permits both recommended *denial* of the requested relief. Because the public hearing bodies produced the very result that the plaintiffs sought, whatever technical defects a court might find with the procedures could not have resulted any better for the plaintiffs. Thus, from a strictly procedural perspective, one could question whether there was a justiciable controversy for which the courts could fashion any meaningful relief.

This issue apparently never came before the trial court, and therefore was not part of the appeal. Perhaps this issue was overlooked because of a fact largely overlooked by the courts, to-wit: the Village of Lisle was only a nominal defendant in the case. Although the Village's procedures were the center of the dispute, local elections following the Village Board's approval of the Meijer development brought a change in the Village's viewpoint so that it was adverse to the development. Because of annexation agreement obligations, however, the Village could not oppose the approvals, leaving it no choice but to effectively stay on the sidelines and let Meijer defend the case. Thus, this case proceeded at the trial and appellate court levels without *any* meaningful input from the affected municipality. In the Supreme Court, several municipalities filed an *amicus curiae* brief to express municipal concerns, but the issues in the case were already framed and could only be marginally influenced.

In short, the *Klaeren* case came to the courts focusing on the excessive limitations on the opportunity for members of the public to participate in the hearing process, but overlooking the facts that the hearings yielded precisely the results that the plaintiffs sought in the case and that the affected municipality was necessarily a "no-show" in court. The seeds for a troubling decision were planted early on.

C. The Appellate Court Decision

In reviewing this case, the Appellate Court of Illinois, Second District, held that the procedures used at the public hearing in Lisle violated the public hearing rights of the adjacent landowners. In doing so, the Second District determined that *all* public hearings "in all municipalities" must allow not only the right of cross-examination, but the "full panoply of rights" to subpoena witnesses, present witnesses and request continuances for purposes of developing rebuttal evidence.[8]

The Second District's blanket ruling assumed that all public hearings are the same. The Illinois Compiled Statutes, however, include numerous types of public hearings to serve a variety of purposes. Some of these hearings are quasi-judicial or adjudicative, while others are plainly legislative. Given the various types and purposes of public hearings, applying the Appellate Court's "one size fits all" ruling would be quite impractical, if not inconsistent with existing law.

Many of the public hearings required in the Illinois Compiled Statutes are clearly legislative in nature, and their purposes vary. They are used for investigating the efficiency of government employees,[9] for soliciting public objections and suggestions regarding public projects,[10] for explaining intended governmental actions,[11] and for fact-finding purposes.[12] Other hearings have no express purpose, but do provide the public with an opportunity to be heard prior to consideration of important governmental decisions.[13] Thus, the common purpose of such hearings is to foster greater democratic participation in local governance and to provide opportunities for more informed public decision-making — whether or not the opinions expressed at public hearings are based on verifiable facts.

The General Assembly has not prescribed a single set of hearing procedures for all hearings. As a

result, some hearings do not require testimony to be under oath,[14] while others do.[15] For some hearings, members of the public have an express right to submit written statements.[16] Some hearings authorize the public to comment generally on the subject of the hearing, while other hearings prescribe the topics on which testimony may be offered.[17] Because the General Assembly has chosen to establish special procedures for certain hearings, the statutes themselves should be the source for determining what procedures are required for any particular hearing.[18] The courts have no need to elaborate on those procedures,[19] except as necessary to afford citizens a fair opportunity to communicate their views to public officials.[20]

Furthermore, the legislative hearing process is designed to vet an issue, but not necessarily to decide it.[21] This has historically been the case in the land use context, where the power of the corporate authorities to amend an ordinance or grant an approval has historically not been constrained by the evidence presented at a public hearing.[22] Moreover, at least prior to the Supreme Court's decision in *Klaeren*, when the corporate authorities of a municipality decided a zoning issue, the evidence presented at the public hearing would be both irrelevant and inadmissible in a subsequent court challenge.[23] Only when a local zoning board of appeals had final decision-making power would the record be appropriate for a court to consider pursuant to the Administrative Review Law.[24] Thus, prior to *Klaeren*, there has been no practical need for procedural perfection in the vast majority of zoning hearings.

D. <u>The Supreme Court's Decision</u>

In its review of the appellate court's decision in *Klaeren,* the Supreme Court expressly rejected the Second District's conclusion that *any* public hearing before *any* municipal body required the municipal body to provide the full spectrum of rights identified by the Second District. The Supreme Court held that the Second District had construed the phrase "public hearing" too broadly.[25] The Supreme Court properly distinguished between the process necessary at "legislative" hearings and "quasi-judicial" or adjudicative hearings, noting that quasi-judicial hearings must provide certain procedures for public participation not required for legislative hearings.[26]

It was the next step of the Court's analysis that turned Illinois zoning law on its head. The Court overturned more than 40 years of precedent and decided that, when considering special use permits, the corporate authorities of municipalities were acting in a quasi-judicial rather than legislative capacity.[27] In taking this dramatic step, the Supreme Court determined that special use permits were adjudicative hearings because "the property rights of the interested parties are at issue."[28] Because many matters coming before municipalities directly affect the property rights of individuals (including annexation agreements), the Court's opinion does not provide a clear basis for distinguishing adjudicative and legislative hearings. Moreover, the Court offered little guidance in determining what procedural rights are extended to participants in public hearings. The upshot of the Court's decision is that municipalities face great uncertainty regarding whether a hearing is adjudicative or legislative.

Ironically, the Court's decision was largely unnecessary for several reasons. First, there is no constitutional requirement for a public hearing in the zoning or annexation context.[29] Thus, the only rights that the plaintiffs had were the public hearing rights provided by statute. With respect to the special use permits, the plaintiffs received exactly the outcome they sought from the hearing bodies: negative recommendations. Theoretically, a fairer hearing process could have resulted in a more persuasive recommendation that might have changed the Village Board's ultimate decision. The plaintiffs, however, did not challenge the substantive decision of the Village Board, only the procedural process. Thus, the Court could have found this to be a case of "no harm, no foul."

Second, even if the Court found that the procedures that Lisle employed were so fundamentally unfair that some redress was required, the Court could have acted without disturbing such longstanding precedent. Specifically, the Court could have issued a narrow decision that the procedures were so restrictive that they failed to satisfy the statutory requirement for a public hearing. This approach would have

addressed the perceived wrong with minimal repercussions.

Third, even if the plaintiffs had objected to the substantive grounds for issuing the special use permits to Meijer, the Court did not have to fashion a new remedy to address such objections. Illinois courts long ago established that such challenges can be brought to the circuit court for a trial *de novo* to determine whether the decision was arbitrary and unreasonable based on the so-called "*LaSalle* factors."[30] This is a familiar and well-understood remedy. In contrast, the Court's ruling that the special use permit hearings in Lisle were quasi-judicial raises unanswered questions regarding the available judicial remedy. The Illinois procedures under the Administrative Review Law are not available because the special use was not determined by a final action of the zoning board of appeals.[31] There is also some doubt regarding the availability of a common law writ of *certiorari* because plaintiffs would seem to have the right to bring a *LaSalle* factor-based declaratory action.[32] Moreover, in the *Klaeren* case, the plaintiffs did *not* seek a writ of *certiorari* and the trial court acted based on evidence outside hearing record, which is improper when proceeding under a writ of *certiorari*.[33]

Despite the opportunity to decide the dispute on much narrower grounds, the Court's decision seemed to be fueled by the perception of some commentators that a majority of other states regard hearings on special uses as quasi-judicial rather than legislative.[34] Although such commentaries will be discussed further in Part 2 of this article, the Court apparently accepted these commentaries without regard to the existing statutory structure in Illinois. For example, if the standard for adjudicative hearings depends on whether the hearing affects individual rights, then the zoning amendment process that the General Assembly has created is schizophrenic. Illinois courts have previously ruled that amendments to zoning regulations are generally applicable and do not affect any particular property.[35] On the other hand, there can be little doubt that an amendment to a zoning map with respect to a single parcel affects individual property rights. Nevertheless, the General Assembly has created a single hearing process for both of these amendments, and such process includes its own relief in the form of protests and super-majority votes.[36] Under the Court's new view, a zoning amendment hearing can conceivably be legislative or quasi-judicial. This hardly seems to be the result anticipated, as the General Assembly has not subjected the amendment process (or the special use process) to the Illinois Administrative Review Law, even though it plainly has done so with other zoning processes when it deemed appropriate.[37]

E. <u>Potential Consequences of *Klaeren*</u>

Although it is too early to determine all of the consequences from the Supreme Court's decision in *Klaeren*, some initial observations are appropriate.

First, the right of cross-examination will be available in at least some zoning hearings.[38] Neither the Supreme Court nor the Appellate Court offered any specific guidelines for implementing these new rules. Thus, municipalities will have the task of adopting procedures "uniquely suited to local conditions."[39] The Appellate Court has already identified a number of the procedural issues to be addressed, including: (i) who are the beneficiaries of such rights (*i.e.,* who has standing to cross-examine); (ii) what will be the allowable scope of cross-examination; (iii) which witnesses will have their testimony subject to cross-examination; and (iv) what factual issues are relevant for purposes of cross-examination.[40] Although these issues may be customary for courts to decide, they are not standard fare for local zoning officials, who in the vast majority are not trained as attorneys. Moreover, both the Appellate Court and Supreme Court cautioned that reasonableness of such procedures will be subject to judicial review based on the particular circumstances.[41]

As a result, special use and other zoning hearings will likely take on the character of "mini-trials." This will necessarily increase the complexity of the hearing process. Moreover, because the Court has now recognized a procedural due process claim where someone is not extended adequate opportunities for cross-examination, municipalities will be faced with the Hobson's Choice of allowing unrestrained

cross-examination for every person who requests it, or facing litigation every time that someone believes his or her cross-examination rights were improperly curtailed. The former approach presents the risk of interminable hearings (with associated administrative costs),[42] while the latter increases the need for (and cost of) legal services. Both approaches will likely exacerbate the difficult task of recruiting qualified citizens to serve as zoning officials.

Second, municipalities can expect more zoning litigation. Prior to *Klaeren*, a municipality might encounter a challenge to the substantive correctness of granting or denying a special use permit. In light of *Klaeren,* even if a municipality makes the correct decision, it may still face litigation if it did not have a procedurally perfect hearing.

Third, far from enhancing the public process, the *Klaeren* decision may diminish it. If certain zoning hearings are now deemed quasi-judicial, a disappointed applicant may be required to sue all residents who asked questions at the hearing because they are conceivably parties in interest. Similarly, any person who testifies may suddenly become the subject of cross-examination by a petitioner or another resident. Also, as the entire process becomes increasingly legalistic, neighboring property owners may feel that their rights cannot be fully exercised without legal counsel. The cost to the ordinary citizen of communicating to local officials at public hearings may increase and become prohibitive.

Finally, the effectiveness of the process may be impaired. If the new procedures are perceived as shifting the responsibility of questioning a zoning petitioner from the designated hearing body to "interested" property owners, the hearing body may itself become more passive and assume a role of making recommendations based on information presented instead of independently investigating the facts to reach the best policy alternative. Given the experience and local knowledge that many zoning boards bring to bear on zoning issues, this could be the greatest loss of all to the public interest.

F. Conclusion to Part 1

The Supreme Court in *Klaeren* held that when a municipality holds a public hearing to consider a special use application – whether the application is being considered on its own, or in conjunction with other land use relief – the municipality must allow the cross-examination of witnesses in some form. The Supreme Court's decision does not specifically require any other due process protections for any other kind of public hearing. However, the Supreme Court's decision requires the Village to determine, on a case-by-case basis and with limited judicial guidance, what kind of public hearings are "quasi-judicial," and what kind of due process protections are required at those hearings. ■

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1 Case No. 90537, 2002 Ill. LEXIS 941 (Ill. Supreme Court, 10/18/02).
2 *People ex rel. Klaeren v. Village of Lisle*, 316 Ill. App. 3d 770, 737 N.E.2d 1099 (2d Dist. 2000).
3 2002 Ill. LEXIS 941 at 27.
4 *Id.* at 2-7.
5 *Id.* at 9.
6 *Id.* at 7-14.
7 737 N.E.2d at 1107.
8 *Id.* at 1110.
9 *See* 65 ILCS 5/10-4-4.
10 *See, e.g.,* 65 ILCS 5/11-130-4 and 11-141-15.
11 35 ILCS 200/18-80 (truth-in-taxation hearings).
12 *See Petersen v. Chicago Plan Comm'n*, 302 Ill. App. 3d 461, 466 (1st Dist. 1998) (hearings under Chicago's Lakefront Protection Ordinance).
13 *See, e.g.,* 65 ILCS 5/8-2-9 (hearings on annual appropriation ordinances); 11-15.1-3 (annexation agreements).
14 *See, e.g.,* 65 ILCS 5/11-15.1-3 (annexation agreements).
15 *See, e.g.,* 65 ILCS 10-4-4 (investigations of municipal ordinance enforcement); 65 ILCS 5/11-13-18 (zoning hearings).
16 65 ILCS 5/11-12-7 (comprehensive plans).
17 *Compare, e.g.,* 65 ILCS 5/11-130-4 (construction of waterworks facilities), *with* 35 ILCS 200/27-35 (special service areas).
18 *See In re Consolidated Objections to Tax Levies of School District No. 205*, 193 Ill.2d 490, 496 (2000).
19 *See People v. Pullen*, 192 Ill.2d 36, 42 (2000).

20 *See Petersen v. Chicago Plan Comm'n*, 302 Ill. App. 3d at 466.

21 Even the Second District acknowledged that while such legislative hearings are required, the legislative bodies are not required to listen. 737 N.E.2d at 1113. *See also* 65 ILCS 5/11-130-4 ("At this hearing all objections and suggestions shall be heard, and the corporate authorities shall take such action as they shall deem proper in the premises").

22 *See Freesen Inc. v. County of McLean*, 258 Ill. App. 3d 377, 382-83 (4th Dist. 1994); *Anthony v. City of Kewanee*, 79 Ill. App. 2d 243, 249 (3d Dist. 1967). It is also important to note that the General Assembly has required a greater number of votes to approve special use permits and variations when the hearing body did not recommend such approval. 65 ILCS 5/11-13-1.1, 5/11-13-10. Such extraordinary voting requirement, however, does not limit the ultimate authority of the corporate authorities to disregard the public hearing results.

23 *See Yusef v. Village of Villa Park*, 120 Ill. App. 3d 533, 545 (2d Dist. 1983); *Thompson v. Cook County Zoning Board of Appeals*, 96 Ill. App. 3d 561, 575 (1st Dist. 1981); *Smith v. County Bd. of Madison County*, 86 Ill. App. 3d 708, 718 (5th Dist. 1980).

24 65 ILCS 5/11-13-13; *see also* 735 ILCS 3-101 *et seq.* (Administrative Review Law).

25 2002 Ill. LEXIS 941 at 24-25.

26 *Id.* at 25, 28-29.

27 *Id.* at 27-28. The Supreme Court long ago recognized that municipalities act legislatively when conducting zoning hearings. *LaSalle Nat'l Bank v. County of Cook*, 12 Ill. 2d 40 (1957). Moreover, the Supreme Court confirmed the legislative nature of special use permits in *Kotrich v. County of DuPage*, 19 Ill. 2d 181 (1960), and Illinois courts have consistently re-affirmed the legislative character of special use permits.

28 2002 Ill. LEXIS 941 at 28.

29 *See River Park, Inc. v. City of Highland Park,* 23 F. 3d 164, 166 (7th Cir. 1994), *citing City of Eastlake v. Forest City Enterprises, Inc.*, 426 U.S. 668 (1976) (procedural due process can be satisfied for zoning decisions through the political process without any hearing); *Hunter v. City of Pittsburgh*, 207 U.S. 161 U.S. 178-79 (1907) (no process is constitutionally due in annexation decisions).

30 *Cf. LaSalle Nat'l Bank v. County of Cook*, 12 Ill. 2d 40, 46-48 (1957). When planned developments or other special use permits are involved, courts can evaluate whether the *LaSalle* factors have been satisfied by considering the standards for such relief as provided in the local zoning ordinance. *See LaSalle Nat'l Bank v. Village of Bloomingdale*, 154 Ill. App. 3d 918 (2nd Dist. 1987).

31 *See* 65 ILCS 5/11-13-13. *See also Wilkins v. State of Illinois,* 51 Ill. 2d 88, 90 (1972) (administrative review procedures are only available when expressly authorized by statute).

32 *See Russell v. Department of Natural Resources*, 183 Ill. 2d 434, 440-41 (1998) (*certiorari* is available when there is no other available form of review).

33 *See Zenith Vending Corp. v. Village of Schaumburg*, 180 Ill. App. 3d 354, 361-62 (1st Dist. 1989).

34 2002 Ill. LEXIS 941 at 26.

35 *See Bieretz v. Village of Montgomery,* 67 Ill. App. 2d 403 (2d Dist. 1966).

36 *See* 65 ILCS 5/11-13-14.

37 *See* 65 ILCS 5/11-13-13 (administrative review applies when the zoning board makes a final administrative decision).

38 Although final variation hearings before zoning boards of appeals have long been recognized as quasi-judicial hearings, the right of interested parties to cross-examine witnesses has not been apparent in municipalities outside Chicago. The Illinois Municipal Code provisions extending rights of cross-examination apply expressly only to municipalities over 500,000. 65 ILCS 5/11-13-7a.

39 737 N.E.2d at 1111.

40 *Id.* at 1110-12.

41 2002 Ill. LEXIS 941 at 33; 737 N.E.2d at 1111.

42 The administrative costs will be further increased because full transcripts may become necessary to preserve the record for future review of the newly ordained quasi-judicial hearings.

SUGGESTED RULES FOR CONDUCTING A HEARING POST-KLAEREN DECISION

A subcommittee of the Home Rule Attorneys Committee has produced the attached Suggested Rules for Conducting A Hearing Post-Klaeren Decision. These rules are the result of many hours of research, deliberation, and revisions and take into account the variety of specific zoning issues and the differing size of municipalities throughout Illinois.

The Suggested Rules are just that. If they help your municipality as written, please use them. If not, modify them to better serve your city in accordance with your reading of the Klaeren decision.

The Illinois Municipal League acknowledges the long hours of work and dedication of the following members in formulating these rules:

John H. Brechin, Chair

Daniel P. Blondin

Robert Bush

Ronald Cope

Gerald Gorski

Roger Huebner

Robert Masini

William Raysa

James Rhodes

Jerry Zarley

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IML KLAEREN SUBCOMMITTEE

COMMENTS AND SUGGESTED RULES FOR PUBLIC HEARING

- March 6, 2003 -

On October 18, 2002, the Illinois Supreme Court issued its opinion in the case of Klaeren v. Village of Lisle, 202 Ill.2d 164, 781 N.E.2d 223, 269 Ill.Dec. 426 (2002). Among the significant holdings of the Court in Klaeren was that municipal bodies act in administrative or quasi-judicial capacities when those bodies conduct zoning hearings concerning a special use petition. The rationale of the Court implies that this ruling will likely be extended to other site-specific land use decisions, such as variations.[1] In light of this holding, the land use public hearing must be conducted in a manner which meets the due process rights of the applicant and other interested persons.[2] The hearing will include, but is not limited to, the right of cross-examination and the right to present witnesses. The purpose of these comments and the following proposed rules is to guide governmental bodies in the conduct of public hearings related to administrative or quasi judicial site-specific land use approvals, including special uses, variations, rezoning and planned developments in light of Klaeren. It is recommended that public bodies review these rules with their attorneys and adopt their own rules of procedure as needed. These rules are intended to be supplemental to, and should be coordinated with, the provisions of local ordinances.

A "public hearing"[3] is a formal proceeding mandated by law for the purpose of taking evidence with a view to formulating a decision or recommendation on an issue within the jurisdiction of the public body. A "public hearing" is distinguished from a "meeting" in that all hearings are meetings, but not all meetings are hearings.

Notice requirements for a public hearing are found in State law and local ordinances. Care should be taken to ensure that notice is given in a timely manner consistent with statutory and ordinance requirements.

Although courts have indicated that there may be some discretion to restrict the class of persons eligible to take part in the public hearing, it is recommended that any person so desiring be allowed to participate in the matter.[4]

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, such as time limits and barring repetitious, irrelevant or immaterial testimony. Time limits, if imposed, shall be fair, and equally administered.[5] 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, which ruling may be overruled by a majority of at least a quorum of the public body. The Chair may impose reasonable conditions on the hearing process based on the following factors[6]:

a. The complexity of the issue.
b. Whether the witness possesses special expertise.
c. Whether the testimony reflects a matter of taste or personal opinion or concerns a disputed issue of fact.
d. The degree to which the witness's testimony relates to the factors to be considered in approving or denying the proposal
e. 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 shall be made as directed by the public body.[7]

6. At a public hearing, a Petitioner may appear on his or her own behalf or may be represented by an attorney.[8]

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.[9]
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 and the public body's recommendation or decision based upon the record.[10]

15. These Rules for Public Hearing may be amended by a vote of a majority of the public body.

FOOTNOTES

[1] It is unclear whether rezoning of specific property fits within the Klaeren reasoning although the recent Second District Appellate Court decision in Gallik v. County of Lake seems to imply that such decisions fall under Klaeren. "It is not part of a legislative function to grant permits, make special exceptions or decide particular cases. Such activities are not legislative but administrative quasi judicial or judicial in character."

[2] Procedural due process is a flexible concept and the procedural protections employed must be adapted to the particular situation. Courts consider three (3) factors when determining the procedural protections due process requires:

a) The private interest that will be affected by the official action.
b) The risk of an erroneous deprivation of such interest through the procedures used and the probable value of additional or substitute procedural safeguards.
c) The government's interest including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirements would entail. Matthews v. Eldridge, 424 US 319, 334 (1976).

[3] The Appellate Court decision in Klaeren, 737 N.E. 2nd 1099, 250 Ill.Dec. 122, 132, specifically adopted the reasoning expressed in E & E Hauling v. County of DuPage, 77 Ill.App. 3rd 1017, 1021, 33 Ill.Dec. 536 (1979) that a "public hearing before any tribunal or body means the right to appear and give evidence and also the right to hear and examine the witnesses whose testimony is presented by opposing parties."

Municipalities may wish to consider authorizing a "pre-hearing" conference to clarify legal and factual issues, exchange documents and information, discuss stipulations and the order of witnesses, similar to what may be done in a court pretrial conference.

[4] The definition of the party entitled to participation in the municipal proceedings has been constructed broadly. Village Supermarket, Inc. v. Mayfair Supermarkets, Inc., 634 A.2d 1381, 1388 (N.J. Super 1993) (variance hearing). "While notice must be given to property owners within 200 feet, they are not the only ones with standing to participate." Id. Piney Mountain construed it even more broadly: "[W]here… a corporate petitioner has no property interest, but represents individuals who live in the affected area and who potentially will suffer injury by the issuance of a special permit, such petitioner has standing to seek judicial review of municipality's action in approving an application for a special use permit." Piney Mountain, 304 S.E. at 252. This broad definition appears to be allowed because "[a]n application to the planning board for a variance and site plan approval requires a fact-finding hearing that is not literally an adversary process. The proceeding is not a lawsuit. Objectors have the right to be heard." Id.

A municipality can however adopt rules limiting the class of individuals allowed to exercise a right of cross-examination. People ex. el. Klaeren v. Village of Lisle, 737 N.E. 2nd 1099, 250 Ill.Dec. 122, 134.

[5] The Appellate Court in Klaeren discussed a variety of procedural devices which municipalities may employ, including:

a) Limiting the class of individuals allowed to exercise a right of cross-examination.
b) Require those wishing to exercise the right of cross-examination to register in advance of the public hearing.
c) Require those who wish to cross-examine to allege some special interest beyond that of the general public.
d) Adopt rules creating a presumption of the right to cross-examination in favor of an identified class.
e) Reasonably restrict the right of cross-examination based on the subject matter.
f) Adopt rules specifying which factual issues are considered relevant to the decision and limiting cross-examination to witnesses addressing those issues.

In light of the probable need for more formal hearing procedures, municipalities may wish to consider utilizing a hearing officer for more complex hearings. See 65 ILCS 5/11-13-14.1.

[6] The Klaeren Supreme Court decision makes clear that the right of cross-examination "is not unlimited and may be tailored by the municipal body to the circumstances specifically before it. 269 Ill.Dec. 438. To what extent the full panoply of due process rights commonly associated with quasi-judicial hearings must be afforded interested parties depends upon the purpose of the hearing. 269 Ill.Dec. 437. See also Hannah v. Larche, 363 US 420 (1960).

[7] Although the term "record" is not defined, the Code of Civil Procedure implies that in administrative review actions at a minimum the record should contain "the original or certified copy of the entire record of proceedings under review including such evidence as may be heard by it and the findings and decisions made by it." 735 ILCS 5/3-108 (b). Supreme Court Rule 323 also describes in detail the contents and procedure for creating a report of proceedings.

A municipality may want to consider adopting an appropriate ordinance to recoup through its fees sufficient sums to offset the anticipated higher costs of a more formal hearing process.

[8] A petitioner is always authorized to represent his or her interests or those of the entity in which he or she is a principal. It is thought however that a land planner,

engineer or other professional who is not an attorney may engage in the unauthorized practice of law by the representation of parties in a public hearing.

[9] Such cross-examination rights may be limited to certain individuals. All property owners within 250 feet of proposed special use must be afforded the right of cross-examination. 250 Ill.Dec. 133. In smaller municipalities it is more difficult to adopt a per se rule defining which adjoining land owners are so adversely affected by the determination that they should be entitled to additional procedural safeguards. "Municipal authorities in such areas should be free to adopt procedural rules uniquely adapted to reflect these differences." 250 Ill.Dec. 133. A zoning body has the discretion to limit public comment but it should do so with care. 250 Ill.Dec. 136. A proceeding that incorporates an arbitrary time limit without consideration of the nature of the comments and the relevance to the factual issues presented fails to meet the statutory definition of a public hearing. 250 Ill.Dec. 137, wherein a two (2) minute time limit imposed on public comments was found to be unreasonable.

[10] A thorough, well-written ordinance approving or disapproving an application may constitute a sufficient "written decision", especially if it incorporates appropriate findings concerning the relevant ordinance standards involved.