

Village of Itasca
Plan Commission Public Hearings Protocols during COVID-19 for Larger Hearings

I. TYPES OF HEARINGS

These procedures are recommended to be used for zoning petitions which the Village reasonably anticipates will result in larger-than-usual public participation which may exceed the acceptable number of people pursuant to government guidelines for social distancing, such as the petitions filed by Haymarket DuPage, LLC (continued) and the Itasca Country Club for planned developments.

II. ACKNOWLEDGMENT OF RISK FROM PETITIONERS

The present pandemic presents unique challenges and risks inherent in conducting an electronic public hearing, including the potential for objectors to raise alleged due process flaws to a court. The Village believes that this adopted format provides the proper due process to all participants and interested parties. Petitioners should be given the choice between moving forward now or waiting until in person hearings may be conducted.

Petitioners who wish to move forward with public hearings under the current conditions must acknowledge in writing before the hearing that they are voluntarily choosing to go forward, that they waive any claims related to the procedures utilized to conduct the public hearing, and that they assume the risk that the public hearing may later be found defective and the approvals given may ultimately be reversed by a court.

III. NOTICE OF THE NEW FORMAT

The agenda for the meeting in which the public hearing is occurring must include information on how the public can participate in the hearing with and without internet access. Additionally, the agenda must inform the public of the option to submit comments or questions in writing before the meeting via email or mail. If statutory notice of the hearing has not yet occurred, Petitioners should also include a link to these amended hearing protocols with the statutory notice.

IV. REMOTE HEARING LOGISTICS

The Village will have a videoconference set up which includes the following:

- In person or virtual access by the Plan Commissioners, Village staff, petitioners, and interested parties (defined below) which is consistent with the current State, gubernational, and county directives regarding social distancing, mask requirements, and limitations on the number of persons in a room.
- The Plan Commission, petitioner, and all interested parties appearing and participating in the hearings must have audio and video capabilities on the Village's chosen platform.
- Ability for the public to view remotely any presentations and exhibits presented to the Plan Commission.
- Ability for the Plan Commissioners to ask questions throughout the hearing.
- Ability for the petitioners and interested parties to cross examine witnesses at the appropriate time.
- Ability of the public to ask questions during the appropriate time at the hearing.

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- Ability of the Plan Commission and/or petitioner to respond to questions/comments.
- Ability of the public to make comments and give testimony at the appropriate time at the hearing.
- Allow for the participation by persons without internet access via phone or in person attendance.
- Allow for the participation by persons with disabilities.

V. INTERESTED PARTIES

A. Definition

An “interested party” is a party that has an interest with extends beyond that of the general public and is entitled to protections by judicial relief (*i.e.*, the party would have standing to challenge the zoning relief). Interested parties fall into three categories: (1) any property owner adjacent to the subject property¹; (2) any property owner within 250-feet of the subject property²; or (3) any individual or entity who can demonstrate that it will suffer a unique injury or special damages different from the general public.³ A party’s status as a taxpayer alone is insufficient to qualify as an interested party. The burden of showing a unique harm is on the party asserting the interest.⁴

Interested parties have the following due process rights: the right to cross examine witnesses and the right to present a case (witnesses and evidence) to the Plan Commission. Interested parties shall abide by the Plan Commission’s rules and procedures and be subject to disclosure deadlines as set by the Plan Commission in order to fully participate in this process.

B. Procedure to be acknowledged as an interested party

Individuals or entities must apply to be recognized by the Plan Commission as an “interested party.” Written applications will be accepted 5 to 10 days before the hearings commence or resume. The applications will be made public and disclosed to all other parties. No late applications will be accepted. Any party objecting to the application must submit a written objection 2 to 5 days before the hearings commence or resume. The Plan Commission will rule on the applications at the start of the commencement or resumption of hearings.

VI. ROLE OF VILLAGE ATTORNEY

The Village Attorney is to advise the Plan Commission and Plan Commission Chairman on procedural matters before during and after the hearing. During the hearing, the Village Attorney shall be responsible for ruling on any objections to testimony or exhibits.

¹ See *Truchon v. City of Streator*, 70 Ill. App. 3d 89, 92-93 (3d Dist. 1979).

² 65 ILCS 11-13-7.

³ See *Anundson v. City of Chicago*, 44 Ill. 2d 491 (1970); *City of Chicago v. John Hancock Mutual Life Insurance Co.*, 127 Ill. App. 3d 140 (1st Dist. 1984); *People for Safer Society v. Vill. of Niles*, 2017 IL App (1st) 160674-U.

⁴ *Treadway v. City of Rockford*, 28 Ill. 2d 370 (1963).

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VII. PRESENTATION AND EXHIBITS MADE AVAILABLE TO THE PUBLIC

Visual presentations by the petitioner, interested parties, or the public must be made available to both members of Plan Commission and to the public. In order to ensure that the presentation materials are available to the public, individuals must submit all presentation materials and proposed exhibits 5 to 14 days in advance of the Plan Commission meeting in which such materials as expected to be presented. All materials will be posted with the agenda on the Village website.

VIII. SWEARING IN WITNESSES

All persons who desire to testify should be asked to raise their right hands and be sworn in at the outset of the hearing. Then, when each speaker begins their individual comments, the chair should have them verbally confirm they have previously been sworn in.

IX. PRESENTATION OF CASES

A. Opening the Hearing.

Plan Commission Chair opens the hearing or the continued hearing. Once the hearing is opened, Plan Commissioners may interrupt proceedings at any time to ask questions of any party or Village staff member.

B. Petitioner's Case

Petitioner will make its presentation and present witness(es) and other evidence. After each witness's direct testimony, interested parties will be allowed to cross examine the witness. Petitioner will be allowed to re-direct any witness following cross examination.

C. Interested Party's/Parties' Case

Each interested party shall have an opportunity to make a presentation and present witnesses and other evidence. After each witness's direct testimony, petitioner will be allowed to cross examine the witness. The interested party will be allowed to re-direct any witness following cross examination.

D. Village Staff Report

Village staff shall have an opportunity to make a presentation and may present witnesses and other evidence. After each witness's direct testimony, petitioner and interested parties will be allowed to cross examine the witness. The Village will be allowed to re-direct any witness following cross examination.

E. Petitioner's Rebuttal Case

Petitioner shall have the opportunity to provide a rebuttal presentation, testimony, or evidence. After each rebuttal witness's presentation or direct examination, interested parties will be

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allowed to cross examine the witness. Petitioner will be allowed to re-direct any witness following cross examination.

X. QUESTIONS FROM THE PUBLIC

Members of the public have the right to question the petitioner and interested parties during the public hearing.

A. Written Public Questions.

The public is encouraged to submit written questions in advance of the public hearing in lieu of live questions. The agenda, Village website, and public hearing notice should specify the manner in which written questions can be submitted (email and mail) and the deadline for submission (2 hours before the meeting). The written questions received will be read into the record by staff at the appropriate point in the public hearing. The Plan Commission, staff, petitioner or interested party will have an opportunity to respond to written questions submitted in advance of the meeting.

B. Live Public Questions.

Members of the public must sign up in advance of the hearing via email or phone call of their intent to question the petitioner and interested parties, and the deadline for submission (2 hours before the meeting). Any documents that will be used during questioning must be provided to Village staff no later than 5 to 7 days before the Plan Commission meeting so that these documents may be made available to the Plan Commissioners, petitioner, and the testifying witness before the hearing.

Following the presentation of cases, members of the public who have signed up in advance will be individually called upon to present their questions either by phone or other remote access. The Village Attorney or Plan Commission Chair will determine whether the question and/or answer will assist the Plan Commissioners in making a decision (*i.e.*, whether the question is relevant and not repetitive). If relevant and not repetitive, the petitioner, interested party, or Village staff will be invited to answer the question.

The party to whom the question is posed may determine which witness or representative is best suited to answer the question.

XI. PUBLIC COMMENTS

Members of the public will be allowed to make comments during the public hearing. Public comments will occur after the presentation of cases and questions from the public. All members of the public wishing to comment must identify themselves and identify whether they are residents of the Village of Itasca.

A. Written Public Comments.

The public is encouraged to submit written comments in advance of the public hearing in lieu of live comments. The agenda, Village website, and public hearing notice should specify the

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manner in which written comments can be submitted (email and mail) and the deadline for submission (2 hours before the meeting). The written comments received will be read into the record by staff at the appropriate point in the public hearing.

B. Live Public Comments.

The public will be allowed to make comments live during the remote public hearing. The agenda, Village website, and public hearing notice should specify how members of the public can give comments during the public hearing. Members of the public will be allowed to give comments remotely by video or phone.

Any documents that will be used during public comment must be provided to Village staff no later than 5 to 7 days before the Plan Commission meeting so that these documents may be made available to the Plan Commissioners, petitioner, interested parties, and the public.

XII. TRANSCRIPT

A court reporter must be available to create a transcript of the proceedings. The court reporter may appear in person or remotely.

XIII. FINAL ACTION

After the petitioner, interested parties, and the Village have presented their case and the public has had an opportunity to comment, the Plan Commission will close the proofs and adjourn until its next meeting.

Within seven (7) calendar days of the meeting at which the proofs were closed, members of the public may make “technology objections.” Technology objections are any objection to the Plan Commission’s proceedings based *solely* on the failure to access the hearing due to a failure of technology (*i.e.*, internet failure, inability to log into the meeting, etc.). Members of the public must submit in writing to commdev@itasca.com or Village of Itasca, Community Development Department, 550 W. Irving Park Rd., Itasca, IL 60143, explaining in detail any technology objection. The petitioner, any interested party or the Village may respond to the technology objection by three (3) calendar days before the next Plan Commission meeting. The Plan Commission shall hear any technology objections submitted in the interim at its next meeting and, at that point, either reopen proofs or move to a final recommendation to the Village Board.

APPROVED: December 2, 2020