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**ILLINOIS ATTORNEY GENERAL ISSUES SECOND DETERMINATION RELATED TO
ADDISON REDEVELOPMENT PROJECT: CITY OF ELMHURST
VIOLATED FREEDOM OF INFORMATION ACT WHEN IT IMPROPERLY
REFUSED TO DISCLOSE FINANCIAL ANALYSIS**

ELMHURST – For the second time in less than a year, the Illinois Attorney General's Public Access Counselor has determined that the City of Elmhurst failed to comply with state open government laws in relation to the Addison Garage Redevelopment Project. The first determination, made in February 2013, ruled that the City violated the Open Meetings Act (OMA) when it held two closed-session discussions on the Addison Project. Pursuant to the Attorney General Office's instruction in that case, the audiotape recordings of both meetings were released to the public.

The second determination letter was issued December 31, 2013, the end result of a Freedom of Information Act (FOIA) Request for Review filed with the Public Access Counselor by Tamara Brenner, a long-time community activist and observer of the Elmhurst City Council. The FOIA is a state law mandating public access to government records which is meant to ensure that government operates in an open and transparent manner. Under the FOIA, all government records are presumed to be open to the public and must be disclosed upon request unless a government body can prove by clear and convincing evidence that a valid exception applies.

On September 16, 2013, the City held a Committee of the Whole meeting during which cost estimates for the Addison project were presented and discussed in open session: the baseline 45-ft structure would cost \$10.5-11.5 million, and increasing the building height to 65-ft would add \$3 million. On September 18, 2013, Brenner filed a FOIA request seeking the documentation which supported the financial projections that had been presented.

At first the City simply provided no responsive documents, causing Brenner to submit a clarification of the request. The City then availed itself of a one-week extension before issuing its response, which was an outright denial claiming the "pre-decisional records" exemption. This exemption allows public bodies to withhold documents that are drafts, notes and/or recommendations used to help the public body form an opinion about an issue outside of public scrutiny. When Brenner inquired about the denial, the City stated there were two documents at issue: a draft proposal, which included some handwritten notes, and a memo. The City also stated that some of the financial information had been obtained through phone conversations for which there were no corresponding records on paper. The City

declined to reconsider its decision to withhold the written records and Brenner then proceeded to file the Request for Review with the Attorney General's Public Access Counselor.

With the assistance of community lawyers from the Citizen Advocacy Center, Brenner maintained that the documents should be disclosed because: 1) the City has been contractually obligated to build the project since 2009 and any financial information was factual in nature; 2) the Council at no time deliberated the accuracy of the financial analysis; and 3) the only policy decision under consideration was building height. Brenner further argued, in the unlikely event that the documents were deemed to be pre-decisional drafts, that Mayor Morley cited the documents in open session, thereby waiving any exemption that might otherwise allow non-disclosure.

The Attorney General's Public Access Counselor reviewed the documents, which encompass draft proposals produced by the general contractor and a memo produced by the City Manager, and agreed with Brenner's conclusion. The documents contain factual information rather than opinion and therefore are not pre-decisional. The City has been instructed to: 1) disclose the draft proposal prepared by the general contractor because the general contractor's financial interest in the multi-million dollar project is not the same as the City's interest and thus the document is not an intra-agency communication; 2) disclose handwritten notes which appear on the draft proposal prepared by the general contractor because those notes are factual in nature, except that the City *may* redact the portion of the handwritten notes which were made by the Assistant City Manager because these appear to be pre-decisional opinions which were not specifically referenced by the Mayor in open session; and 3) disclose the memo from the City Manager because the memo was not an expression of opinion.

"While I'm pleased with the decision of the Public Access Counselor, I'm disappointed that the City continues to be so adversarial when it comes to meaningful public involvement. Although lip service is given to 'transparency,' the City has now been found in violation of both the OMA and the FOIA related to the same controversial project within the past year."

"It is unacceptable the manner in which the City has moved forward on this project and equally unacceptable that the City continues to rebuff concerns expressed by public officials and the public regarding this project. Why the City feels the need to shroud this project in secrecy is a question that remains unanswered; however, it does provide thoughtful insight into the apparent internal operations within City Hall. We were glad to assist Ms. Brenner in obtaining a favorable determination and will continue to hold City Hall accountable," said Maryam Judar, Citizen Advocacy Center's executive director and community lawyer.

A copy of the Attorney General's Public Access Counselor's Opinion is available on the Citizen Advocacy Center's website at www.citizenadvocacycenter.org

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