



Ill. App. 3d 228 (1st Dist. 2011). The Court finds that Plaintiffs have satisfied each of these requirements.

Plaintiffs have a clearly ascertainable right in need of protection. As adjoining landowners in a special use permit proceeding, they are entitled to participate in a meaningful way, which includes the opportunity to conduct cross-examination and present evidence. That right is recognized by statute, local ordinance, and controlling authority, including *People ex rel. Klaeren v. Village of Lisle*, 202 Ill. 2d 164 (2002), which held that the complete denial of cross-examination to interested landowners in a special use proceeding violates due process. This is not a technical or abstract right, but one directly tied to Plaintiffs' ability to protect their property interests.

Plaintiffs have also demonstrated irreparable harm. The harm is the loss of the opportunity to meaningfully participate in the evidentiary process. Once a hearing proceeds without cross-examination or the presentation of evidence, the resulting record is incomplete. The ability to test testimony, challenge credibility, and develop a factual record cannot be recreated later. That loss cannot be remedied through monetary damages or after-the-fact review.

For similar reasons, Plaintiffs have no adequate remedy at law. Although they may challenge any final decision after the County Board acts, such review would be limited to the record created during the hearing. Because Plaintiffs were denied the opportunity to develop that record through cross-examination and evidence, any later review would necessarily be based on an incomplete and one-sided record. This Court finds such a deficiency cannot be cured after the fact.

With respect to likelihood of success on the merits, the Court recognizes that procedural due process is a flexible concept governed by a standard of reasonableness. The Court further agrees that the appropriate framework is *Mathews v. Eldridge*, 424 U.S. 319(1976) which requires consideration of the private interest at stake, the risk of erroneous deprivation under the procedures used and the value of additional safeguards, and the governmental interest in efficiency and administrative burden. Considering all of this the Court finds while flexibility is a factor it does not bend to the point of breaking the standing requirement for cross-examination.

Applying that framework, this Court finds that Plaintiffs' property interests are significant. The procedures used created a meaningful risk of error because Plaintiffs were not allowed to directly question witnesses or present evidence in a structured manner. While they were permitted to submit questions, that process did not allow for follow-up, clarification, or meaningful testing of testimony. Cross-examination serves a distinct function that cannot be replaced by general public comment or delayed responses.

The Court further addresses Defendant's reliance on language in *Clark v. City of Galena*, 2025 IL App (4th) 241245, suggesting that interested parties were afforded an opportunity to "test, explain, or refute" evidence. That formulation describes a materially different procedural structure than the one used here. "Test," in that context, contemplates a meaningful ability to challenge the reliability and foundation of adverse testimony in a probing, adversarial manner. "Explain" and "refute" similarly presume responsive engagement with identified evidence in a structured evidentiary setting. By contrast, the procedure here permitted each speaker only five

minutes to “discuss, explain, and refute” during public comment. “Discuss” is inherently narrative and non-evidentiary; “explain” is unilateral advocacy rather than engagement with opposing testimony; and “refute,” without the ability to question witnesses or probe the basis of their statements, does not provide a meaningful mechanism to test credibility or resolve disputed factual issues. Accordingly, the Court finds that the procedural opportunity described in Clark is not equivalent to the public comment format utilized here, and the County’s reliance on that comparison is not supported by the functional realities of the record.

The Court further finds that allowing limited, structured cross-examination would have significant value in reducing the risk of erroneous deprivation and would not impose an undue burden on the County. While the County has a legitimate interest in conducting efficient proceedings, that interest does not justify the denial of a core procedural protection. Balancing these factors, the Court finds that the procedures employed did not meet the requirements of fundamental fairness under *Mathews v. Eldridge* and *People ex rel. Klaeren v. Village of Lisle*.

The Court further finds that while a five-minute limitation on individual public comment is not, in itself, unreasonable given the number of participants, reasonableness under due process requires flexibility in application. Where, as here, counsel appeared on behalf of multiple interested parties, limiting that representative to the same five-minute period afforded to a single individual did not provide a meaningful opportunity to be heard and contributed to the denial of effective participation.

The Court also finds that the last-minute invitation to allow questioning of witnesses does not cure the earlier denial. Plaintiffs’ counsel had been clearly informed in advance that cross-examination would not be permitted and reasonably relied on that representation. The subsequent offer, made only after Plaintiffs’ counsel did not appear at the second session in reliance on that prior instruction, did not provide a meaningful or realistic opportunity to exercise the right to cross-examination and was, under the circumstances, insufficient to remedy the procedural deficiency.

Finally, the balance of equities favors Plaintiffs. While the County has an interest in proceeding with its decision-making process, that interest is outweighed by the need to ensure that the process itself is fundamentally fair.

The Court emphasizes that this ruling is narrowly tailored. The Court does not invalidate the entire public hearing and does not require the County to conduct a new hearing for all participants. Instead, the relief is limited to a continuation of hearing to cure the specific procedural deficiency identified. The County may satisfy this obligation by limiting the relief to Plaintiffs, during which Plaintiffs shall be afforded a meaningful, yet reasonable, opportunity to conduct cross-examination and present evidence. The County Board may rely on the existing record, and no additional general public comment is required.

Accordingly, Plaintiffs’ Motion for Temporary Restraining Order is granted. Defendant County of Will is enjoined from taking final action on Zoning Case No. ZC-25-129 until Plaintiffs are afforded a meaningful opportunity to conduct cross-examination and present evidence consistent with this Order.

The Court further declines the Intervenor's request to require a bond. In exercising its discretion, the Court has considered the relevant factors governing security for injunctive relief. See *Save the Prairie Soc'y v. Greene Dev. Grp., Inc.*, 338 Ill. App. 3d 800, 804-05 (1st Dist. 2003); *Gold v. Ziff Commc'ns Co.*, 196 Ill. App. 3d 425, 436 (1st Dist. 1989). First, the hardship to Plaintiffs weighs against requiring a bond, as the relief granted is limited to preserving procedural due process rights. Second, although Plaintiffs are not a not-for-profit entity, the absence of a profit motive does not control the analysis but reinforces that this is a rights-preserving action rather than a damages-driven dispute. Third, there is no showing that Plaintiffs' financial capacity renders a bond necessary, and in any event, the purpose of the injunction is to prevent procedural injury that cannot be quantified or compensated in damages. Fourth, the potential harm to Defendant from the limited, narrowly tailored restraint is minimal, as the Order does not permanently enjoin but only requires a supplemental evidentiary opportunity consistent with due process. Under these circumstances, the Court finds that requiring a bond would serve no meaningful protective function and would be inconsistent with the equitable purpose of this relief. Accordingly, no bond is required. This Order shall remain in effect until further order of the Court. Matter is continued for status to April 24, 2026 at 9am.

Date: April 15, 2026



JUDGE