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**VILLAGE OF HINSDALE
ZONING BOARD OF APPEALS
MINUTES OF THE SPECIAL MEETING
October 28, 2015**

1. CALL TO ORDER

Chairman Bob Neiman called the regularly scheduled meeting of the Zoning Board of Appeals to order on Wednesday, October 28, 2015 at 6:38 p.m. in Memorial Hall of the Memorial Building, 19 E. Chicago Avenue, Hinsdale, Illinois.

2. ROLL CALL

Present: Members Marc Connelly (*arr. 6:48 p.m.*), Gary Moberly, Keith Giltner, Kathryn Engel, John Podliska and Chairman Bob Neiman

Absent: Member Rody Biggert

Also Present: Director of Community Development/Building Commissioner Robb McGinnis and Village Clerk Christine Bruton

3. APPROVAL OF MINUTES

a) **September 16, 2015**

Chairman Neiman and Member Podliska made corrections to the draft minutes. Member Moberly moved **to approve the minutes of the meeting of September 16, as amended.** Member Engel seconded the motion.

AYES: Members Moberly, Giltner, Engel, Podliska and Chairman Neiman

NAYS: None

ABSTAIN: None

ABSENT: Members Connelly and Biggert

Motion carried.

4. APPROVAL OF FINAL DECISION - None

5. RECEIPT OF APPEARANCES – None

6. RECEIPT OF REQUESTS, MOTIONS, PLEADINGS, OR REQUESTS TO MAKE PUBLIC COMMENT OF A GENERAL NATURE – None

7. PRE-HEARING AND AGENDA SETTING – None

8. PUBLIC HEARINGS

a) **MIH v Anglin –Remand from Circuit Court of DuPage County**

Due to the complexity of the matter before the Board, a transcript of the following proceedings is included as part of this record.

Mr. Mark Daniel, representing MIH, and Mr. Lance Malina, representing

1 Village Manager Kathleen Gargano, introduced themselves to the Board.
2 Chairman Neiman noted Judge Sheen denied the Village's motion for
3 clarification, but also a motion from Mr. Daniel for summary disposition. Mr.
4 Daniel confirmed that both motions were denied by the judge on October
5 5th.

6 Discussion followed regarding whether the court has given the ZBA the
7 right to re-open the record. Mr. Daniel believes they can do so only if the
8 parties request it. Chairman Neiman believes the ZBA can reopen the
9 record on their own motion. Discussion followed.

10 *Member Connelly arrived at 6:48 p.m.*

11 Member Moberly cited the October 5th transcript and concluded the ZBA
12 can reopen the record. Member Podliska agrees based on language in the
13 transcript wherein the judge says 'I sent it back to the ZBA for them to
14 determine whether they were going to go on the record as is or take new
15 evidence'. Member Podliska concludes it is the decision of the ZBA,
16 although it can act on the recommendation of the parties.

17 Chairman Neiman believes the court offered clarification that the ZBA could
18 make any finding on the record or re-open. As such, the motion for
19 summary judgment has to be denied. Member Engel concurred based on
20 the language in the transcript.

21 Member Connelly **moved to deny the motion for summary judgment.**
22 Member Engel seconded the motion.

23
24 **AYES:** Members Connelly, Moberly, Giltner, Engel, Podliska and Chairman
25 Neiman

26 **NAYS:** None

27 **ABSTAIN:** None

28 **ABSENT:** Member Biggert

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30 Motion carried.

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32 Chairman Neiman introduced the issue of standard and burden of proof.
33 Mr. Daniel submitted a brief on this point, the Village did not. Chairman
34 Neiman suggested that determining who has the burden of proof may not
35 need to be decided. There is a standard of proof in the code when in doubt
36 and this is to determine if the prior decision of the Village Manager was
37 'arbitrary, ill-considered or erroneous'. If it was, then the Board will reverse
38 it. If it wasn't then the Board will uphold it. Discussion followed regarding
39 the burden of proof, but the Board generally agreed they did not have to
40 decide who has the burden of proof.

41 The Board and parties discussed the matter of intent; on this matter the
42 parties disagree, Chairman Neiman invited them to submit further briefs if
43 they wanted, but there is no requirement that either party do so.

44
45 Chairman Neiman suggested the Board discuss whether they want to
46 reopen the record. Member Moberly stated he would prefer to discuss the

1 merits and if during that discussion there is insufficient information, then it
2 can re-opened. He introduced the matter of Cassim's Rug Gallery and
3 hoped any issues with Cassim's can be discarded as he believes it is a
4 moot point, however Mr. Daniel disagreed.

5 Discussion followed regarding the contents of the record. Chairman
6 Neiman noted that if the record were reopened, documentary evidence
7 could be introduced regarding marketing, as he found none in the existing
8 record. Mr. Daniel reviewed MIH's marketing efforts in 2008. The condition
9 and lack of maintenance on the building was discussed, Mr. Daniel
10 described the various reasons garbage might appear or end up onsite. The
11 testimony of Mr. Horne was examined with respect to whether or not he had
12 or there were circulars marketing the property. Mr. Daniel concluded that
13 since the Village Manager does not want to reopen the record, the Village
14 has no new evidence to introduce. Mr. Malina disagreed with this
15 conclusion.

16
17 Chairman Neiman said he read the 2008 ZBA record and noted that both
18 parties had a limited presentation of about an hour. Mr. Daniels said this
19 was not enough time to present. Chairman Neiman stated he read Mr.
20 Horne's testimony and he would have expected someone to introduce
21 exhibits regarding marketing, but no such documents were provided. He
22 offered that one reason to consider re-opening the case would be to
23 subpoena such documents to determine MIH intent as all that currently
24 exists is sworn testimony. Discussion followed regarding MIH's marketing
25 of the site and evidence of same. Mr. Daniel summarized the hearing
26 testimony stating MIH was seeking tenants, but weren't finding a
27 specialized tenant, but they also marketed the property for sale or re-use.
28 He stated the marketing materials existed at the time, but that Mr. Horne
29 did not have them with him. Mr. Malina reminded the Board they needed to
30 take into consideration the sum total of evidence and noted there was no
31 maintenance on the non-conforming use.

32 Chairman Neiman reiterated that for whatever reason there is no
33 documentary evidence, and he does not know if an intelligent decision can
34 be made on the record as it exists. Discussion followed regarding the role
35 of the ZBA and that reopening the record allows the ZBA to ask for more
36 facts. Both parties said they could produce records despite the passage of
37 time.

38 Discussion continued as to whether or not the record should be reopened,
39 from which Chairman Neiman asked the Board members if they needed
40 more time to look at the record. Member Moberly **moved to continue this
41 hearing at a special meeting of the ZBA, date to be determined, to
42 allow the Board more time to go through the entire record specifically
43 looking for intent or lack of intent to abandon the property.** Member
44 Engel seconded the motion.

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2 **AYES:** Members Connelly, Moberly, Giltner, Engel, Podliska and Chairman
3 Neiman

4 **NAYS:** None

5 **ABSTAIN:** None

6 **ABSENT:** Member Biggert

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8 Motion carried.

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10 The hearing was continued to November 12, 2015 and Chairman Neiman
11 confirmed that should the Board agree not to reopen the record, the parties
12 should be prepared to make their arguments.

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14 **9. NEW BUSINESS** – None

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16 **10. OTHER BUSINESS** – None

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18 **11. ADJOURNMENT**

19 With no further business before the Zoning Board of Appeals, Member
20 Podliska made a motion to **adjourn the meeting of the Zoning Board of**
21 **Appeals of October 28, 2015.** Member Moberly seconded the motion.

22

23 **AYES:** Members Moberly, Giltner, Engel, Podliska and Chairman Neiman

24 **NAYS:** None

25 **ABSTAIN:** None

26 **ABSENT:** Member Biggert

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28 Motion carried.

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30 Chairman Neiman declared the meeting adjourned at 8:09 p.m.

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Approved: _____

34 Christine M. Bruton

35 Village Clerk

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