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**VILLAGE OF HINSDALE
ZONING BOARD OF APPEALS
MINUTES OF THE MEETING
September 16, 2015**

1. CALL TO ORDER

Chairman Bob Neiman called the regularly scheduled meeting of the Zoning Board of Appeals to order on Wednesday, September 16, 2015 at 6:32 p.m. in Memorial Hall of the Memorial Building, 19 E. Chicago Avenue, Hinsdale, Illinois.

2. ROLL CALL

Present: Members Gary Moberly, Keith Giltner, Kathryn Engel, Rody Biggert, John Podliska and Chairman Bob Neiman

Absent: Member Marc Connelly

Also Present: Village Manager Kathleen Gargano (left the meeting at 6:44 p.m.), Village Attorney Lance Malina, Director of Community Development/Building Commissioner Robb McGinnis and Village Clerk Christine Bruton

3. APPROVAL OF MINUTES

a) **July 15, 2015**

Member Moberly moved to **approve the minutes of the meeting of July 15, 2015, as amended.** Member Engel seconded the motion.

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

NAYS: None

ABSTAIN: Member Giltner

ABSENT: Member Connelly

Motion carried.

4. APPROVAL OF FINAL DECISION

a) **V-04-15, 35 East Walnut Street**

Member Podliska noted what appears to be a discrepancy between when the Legal Notice was published and when the meeting was held. Staff will confirm the dates.

Member Podliska moved to **approve the Final Decision for V-04-15, 35 East Walnut Street, subject to confirmation of dates.** Member Moberly seconded the motion.

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

NAYS: None

ABSTAIN: None

1 **ABSENT:** Member Connelly

2
3 Motion carried.

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5 **5. RECEIPT OF APPEARANCES**

6 All persons expecting to testify were sworn in by the Court Reporter. Mr.
7 Mark Daniel noted MIH has an appearance on file.

8
9 **6. RECEIPT OF REQUESTS, MOTIONS, PLEADINGS, OR REQUESTS TO**
10 **MAKE PUBLIC COMMENT OF A GENERAL NATURE - None**

11
12 **7. PRE-HEARING AND AGENDA SETTING**

13 a) **V-05-15, 718 West Fourth Street**

14 Mr. Pat Magner, the architect on the project, and Mr. Brett Conway, the
15 homeowner, addressed the Board. Mr. Magner stated they are before the
16 ZBA to request relief to build an addition to the existing home. The
17 property is located on an unusual corner measuring 123' x 47'; he believes
18 there are few lots that size in Hinsdale. When trying to design an addition, it
19 became problematic to stay within the approved maximum building
20 coverage.

21 Mr. Conway said this is a three-bedroom Tudor style home; there is not
22 much closet space, there is a small kitchen and he has three children. His
23 family loves Hinsdale and would love to expand the home.

24 Mr. Magner explained the scope of the proposed addition which would
25 include a kitchen and mudroom and add a fourth bedroom.

26 Mr. Magner referenced the drawings in the packet. He said this is a non-
27 conforming lot, but they will maintain the 20' foot setback on the Fourth
28 Street side. Building elevations are included; the materials will be the
29 same as the original structure because they want the addition to look like
30 it's always been there. They are asking for a 4½% increase in building
31 coverage which they believe is within the realm of complying with other lots
32 in the area.

33 Chairman Neiman suggested the applicant provide evidence, if possible, of
34 neighbor support. He reminded the applicant to be prepared to review the
35 standards for approval during the public hearing and to give some thought
36 to the consequences of the addition in terms of impermeable surface.

37 The public hearing is set for October 21st.

38
39 **8. PUBLIC HEARINGS**

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

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

43 Present this evening are Mr. Lance Malina, Village Attorney, here as litigate
44 representing Village Manager Kathleen Gargano and Mr. Mark Daniel,
45 attorney representing Mr. Mitchell Saywitz, principal in MIH.

46 Chairman Neiman explained that in April 2015 the Circuit Court of DuPage

1 County remanded to ZBA ordered us to decide: 1) is there evidence in the
2 record that MIH intended to discontinue or abandon its legal non-
3 conforming use, before the Village issued letter saying they had; and 2)
4 associated fees paid by MIH. He also stated it is important to note these
5 are the only issues before the Board; the future use of the property is not.
6 Chairman Neiman also noted the ZBA is a Board comprised of volunteers,
7 some members are lawyers, but some are not and these are legal issues
8 before us. MIH's interest in the legal non-conforming use is a property
9 interest, and cannot be taken away without due process as set out by the
10 remand.

11 Member Podliska made note for the record, that he and Mr. Malina were
12 colleagues in the United States Attorney's office from approximately 1990
13 to 1995. He does not believe this will prevent him from being impartial and
14 fair. He asked if any of anyone would want him to recuse himself. They did
15 not.

16 Discussion followed regarding procedural issues and whether the Village or
17 MIH has the burden of proof with respect to intent to close the garden
18 center. Chairman Neiman asked for a supplemental brief on this matter.

19 He also noted the ZBA has the option of reopening, but based on the briefs,
20 neither attorney wants that. Mr. Daniel would be interested in
21 supplementing the record. He would have additional witnesses and
22 subpoenas would be required. All agreed to address this issue should it
23 become necessary.

24 Chairman Neiman noted Mr. Daniel has asked for a summary
25 determination, however, the ZBA has no procedure that allows for motions
26 for summary determinations. Mr. Daniel disagrees.

27 Discussion followed regarding the judges reasoning for the remand. The
28 issue was the intent to abandon. Mr. Malina and Mr. Daniel did not agree
29 on the reasons, but it was noted that the original hearing by the ZBA
30 focused on the time the property was vacant. Chairman Neiman stated that
31 the ZBA would like to avoid making any reversible errors. One way to do
32 this would be for a motion to be filed asking the court for clarification. The
33 Board agrees.

34 Member Biggert **moved to direct the parties to file a motion for**
35 **clarification with the Court with respect to the issue of whether the**
36 **ZBA is empowered to decide the issue of intent on the merits or**
37 **whether the Court has already determined that.** (There was no second;
38 no action was taken on this motion.)
39

40 Mr. Daniel stated that he would not file a motion of clarification with the
41 court. It is his opinion that the direction is clear. Mr. Malina stated he
42 would file the motion. Discussion continued regarding what the judge is
43 directing the ZBA to do.
44

45 Member Podliska **moved to direct the parties to file a motion with the**
46 **Circuit Court to advise the ZBA whether the remand gives the ZBA the**

1 **authority to determine intent on the existing record without reopening**
2 **that record.** Member Engel seconded the motion. (No action was taken on
3 this motion.)
4

5 Mr. Daniel suggested clarification from the judge be sought by another
6 attorney besides Mr. Malina or himself because they are parties in the case
7 and he believes there is a conflict. Specifically, the Village Attorney
8 serving as counsel to the Village Manager asking for a motion to clarify on
9 behalf of the ZBA. Mr. Malina does not believe there is an ethical question
10 here, he is not going to argue the merits he is simply going at the direction
11 of the ZBA to bring a request. Discussion followed.

12 Member Podliska **moved to direct the parties to file a motion with the**
13 **Circuit Court to clarify whether the ZBA has the authority to determine**
14 **the issue of intent based on the existing record.** Member Engel
15 seconded the motion.
16

17 **AYES:** Members Moberly, Giltner, Biggert, Engel, Podliska and Chairman
18 Neiman

19 **NAYS:** None

20 **ABSTAIN:** None

21 **ABSENT:** Member Connelly
22

23 Motion carried.
24

25 Mr. Malina stated he will commit to getting this motion filed by the end of
26 week but would like to have the transcript for the judge which would obviate
27 the need for any briefing.

28 Mr. Daniel stated for the record that he perceives this return to court for
29 clarification as problematic because the Village Attorney is in indirect or
30 direct communication with the ZBA.

31 Chairman Neiman asked Mr. Daniel about Mr. Horne's testimony in the
32 original public hearing wherein he testified to his efforts to lease the
33 property, but there was no documentary evidence of this effort. Mr. Daniel
34 explained this was uncontested sworn testimony, and that he did not know
35 if he could produce such evidence without searching the record.
36

37 Member Moberly asked Mr. Daniel to clarify a comment made by Mr. Daniel
38 wherein he suggested there was secret communication between the Village
39 Attorney and the ZBA. Mr. Daniel clarified his concern regarding how
40 communications had made it to the ZBA and asking for a disclosure of
41 those communications. His concern is staff and how communications take
42 place and at whose direction. Discussion followed regarding the
43 scheduling of a July hearing.
44

45 Mr. Daniel asked if the Board could consider the matter of fees. Mr. Malina
46 summarized stating when this was brought before the ZBA, the Village

1 required MIH reimbursement of court reporter and filing fees and also
2 Village attorney fees. Former Village Manager Cook had an attorney and
3 the Village Attorney represented the ZBA. Judge Sheen found that not
4 reasonable particularly for a non-home rule community. The attorney's
5 fees add up to approximately \$61,000. Mr. Malina said that Mr. Daniel
6 feels some of the fees are unfair; there was an additional publication and
7 other 'unnecessary things'.

8 Mr. Daniel said the Village Manager and MIH are in Agreement that MIH
9 paid \$65,627.23 in three payments; an application fee of \$1,100, a payment
10 in the fall of 2008 of \$8,000 and a final payment of \$56,527.23.

11 He provided Exhibit A, a listing of attorney's fees. Exhibit B is a listing of
12 other miscellaneous fees. The parties agree that \$3,596.25 is non-
13 refundable to MIH as it arose from the fees fairly charged to MIH. The final
14 order when matter is disposed of in its entirety, should include an order that
15 the Village should refund 62,031.08 not the 3,596.25. Mr. Malina and Mr.
16 Daniel agree.

17 There was no further discussion on this matter.
18

19 **9. NEW BUSINESS – None**
20

21 **10. OTHER BUSINESS - None**
22

23 **11. ADJOURNMENT**

24 With no further business before the Zoning Board of Appeals, Member Moberly
25 made a motion to **adjourn the meeting of the Zoning Board of Appeals of**
26 **September 16, 2015.** Member Engel seconded the motion.
27

28 **AYES:** Members Moberly, Giltner, Biggert, Engel, Podliska and Chairman
29 Neiman

30 **NAYS:** None

31 **ABSTAIN:** None

32 **ABSENT:** Member Connelly
33

34 Motion carried.
35

36 Chairman Neiman declared the meeting adjourned at 8:14 p.m.
37
38

39 _____
40 Christine M. Bruton
41 Village Clerk
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Approved: _____