



MEETING AGENDA

ZONING BOARD OF APPEALS

WEDNESDAY, March 16, 2016

6:30 P.M.

MEMORIAL HALL – MEMORIAL BUILDING

(Tentative & Subject to Change)

1. CALL TO ORDER
2. ROLL CALL
3. APPROVAL OF MINUTES
 - a) Regular meeting of October 28, 2015
 - b) Special meeting of November 9, 2015
 - c) Regular meeting of November 18, 2015
4. APPROVAL OF FINAL DECISION
 - a) Remand from the Circuit Court of DuPage County – MIH, LLC., Amlings
5. RECEIPT OF APPEARANCES
6. RECEIPT OF REQUESTS, MOTIONS, PLEADINGS, OR REQUESTS TO MAKE PUBLIC COMMENT OF A GENERAL NATURE
7. PRE-HEARING AND AGENDA SETTING
8. PUBLIC HEARINGS
 - a) V-01-16, 312 Phillippa
9. NEW BUSINESS
10. OTHER BUSINESS
11. ADJOURNMENT

The Village of Hinsdale is subject to the requirements of the Americans with Disabilities Act of 1990. Individuals with disabilities who plan to attend this meeting and who require certain accommodations in order to allow them to observe and/or participate in this meeting, or who have questions regarding the accessibility of the meeting or the facilities, are requested to contact Darrell Langlois, ADA Coordinator at 630-789-7014 or by TDD at **630-789-7022** promptly to allow the Village of Hinsdale to make reasonable accommodations for those persons.

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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

29
30 Motion carried.

31
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, as he found none in the existing record. Mr. Daniel
8 reviewed MIH's marketing efforts in 2008. The condition and lack of
9 maintenance on the building was discussed, Mr. Daniel described the
10 various reasons garbage might appear or end up onsite. The testimony of
11 Mr. Horne was examined with respect to whether or not he had or there
12 were circulars marketing the property. Mr. Daniel concluded that since the
13 Village Manager does not want to reopen the record, the Village has no
14 new evidence to introduce. Mr. Malina disagreed with this conclusion.

15
16 Chairman Neiman said he read the 2008 ZBA record and noted that both
17 parties had a limited presentation of about an hour. Mr. Daniels said this
18 was not enough time to present. Chairman Neiman stated he read Mr.
19 Horne's testimony and he would have expected someone to introduce
20 exhibits regarding marketing, but no such documents were provided. He
21 offered that one reason to consider re-opening the case would be to
22 subpoena such documents to determine MIH intent as all that currently
23 exists is sworn testimony. Discussion followed regarding MIH's marketing
24 of the site and evidence of same. Mr. Daniel summarized the hearing
25 testimony stating MIH was seeking tenants, but weren't finding a
26 specialized tenant, but they also marketed the property for sale or re-use.
27 He stated the marketing materials existed at the time, but that Mr. Horne
28 did not have them with him. Mr. Malina reminded the Board they needed to
29 take into consideration the sum total of evidence and noted there was no
30 maintenance on the non-conforming use.

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

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

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

3 **NAYS:** None

4 **ABSTAIN:** None

5 **ABSENT:** Member Biggert

6
7 Motion carried.

8
9 The hearing was continued to November 12, 2015 and Chairman Neiman
10 confirmed that should the Board agree not to reopen the record, the parties
11 should be prepared to make their arguments.

12
13 **9. NEW BUSINESS – None**

14
15 **10. OTHER BUSINESS – None**

16
17 **11. ADJOURNMENT**

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

21
22 **AYES:** Members Moberly, Giltner, Engel, Podliska and Chairman Neiman

23 **NAYS:** None

24 **ABSTAIN:** None

25 **ABSENT:** Member Biggert

26
27 Motion carried.

28
29 Chairman Neiman declared the meeting adjourned at 8:09 p.m.

30
31
32 _____
33 Christine M. Bruton
34 Village Clerk

Approved: _____

STATE OF ILLINOIS)
) ss:
 COUNTY OF DU PAGE)

BEFORE THE HINSDALE ZONING BOARD OF APPEALS

In the Matter of:)
)
 MIH vs Anglin,)
 Remand from Circuit Court)
 of DuPage County.)

CONTINUED REPORT OF PROCEEDINGS had and
 testimony taken at the hearing of the above-
 entitled matter before the Hinsdale Zoning Board
 of Appeals, at 19 East Chicago Avenue, Hinsdale,
 Illinois, on the 28th day of October, A.D. 2015,
 at the hour of 6:30 p.m.

BOARD MEMBERS PRESENT:

MR. ROBERT NEIMAN, Chairman;
 MS. KATHRYN ENGEL, Member;
 MR. KEITH GILTNER, Member;
 MR. GARY MOBERLY, Member;
 MR. MARC C. CONNELLY, Member;
 MR. JOHN PODLISKA, Member.

* * * * *

<p style="text-align: right;">100</p> <p>1 ALSO PRESENT:</p> <p>2 MS. KATHLEEN A. GARGANO, Village</p> <p>3 Manager;</p> <p>4 MR. ROBERT MCGINNIS, Director of</p> <p>5 Community Development/Building</p> <p>6 Commissioner;</p> <p>7 MS. CHRISTINE BRUTON, Village Clerk</p> <p>8 and Board's secretary;</p> <p>9 MR. LANCE MALINA, Attorney for Village</p> <p>10 Manager;</p> <p>11 MR. MARK W. DANIEL, Attorney for MIH;</p> <p>12 MR. MITCHELL SAYWITZ, Representative of</p> <p>13 MIH, LLC.</p> <hr/> <p>12 CHAIRMAN NEIMAN: The public hearing on</p> <p>13 MIH v Anglin. Let's have the attorneys step up.</p> <p>14 MR. DANIEL: Good evening, Chairman</p> <p>15 Neiman, Members of the ZBA. I'm Mark Daniel,</p> <p>16 D-a-n-i-e-l, for MIH, LLC.</p> <p>17 MR. MALINA: Good evening, Members of</p> <p>18 the ZBA. Lance Malina here on behalf of village</p> <p>19 manager Kathleen Gargano, who is to my right.</p> <p>20 CHAIRMAN NEIMAN: So we have read the</p> <p>21 transcript of the court hearing held on</p> <p>22 October 5th and while the judge apparently</p>	<p style="text-align: right;">102</p> <p>1 request so that we could get a disposition.</p> <p>2 CHAIRMAN NEIMAN: As long as we are at</p> <p>3 it, you may tell your colleague that we were not</p> <p>4 confused either, we were trying to avoid another</p> <p>5 reversible error.</p> <p>6 MR. MALINA: I understand.</p> <p>7 CHAIRMAN NEIMAN: Let's not pick nits.</p> <p>8 In the course it seemed to me, and</p> <p>9 this is an issue for discussion among all the</p> <p>10 board members, while the judge denied both</p> <p>11 motions, the court also seemed to indicate that</p> <p>12 we could do whatever we wanted, whether the</p> <p>13 record was reopened or not, and he would review</p> <p>14 whatever decision we made and that, I believe,</p> <p>15 Mr. Daniel, affects your motion for summary</p> <p>16 disposition here.</p> <p>17 Do you agree, Mr. Daniel?</p> <p>18 MR. DANIEL: Well, the judge said, you</p> <p>19 can do whatever you want. He didn't tell you</p> <p>20 what to do. He told you through instructions</p> <p>21 what the law was and to use those instructions</p> <p>22 to make your decision.</p>
<p style="text-align: right;">101</p> <p>1 denied the village's motion for clarification,</p> <p>2 however you titled it, there was also a motion</p> <p>3 that I gather Mr. Daniel brought for --</p> <p>4 essentially for summary disposition to the</p> <p>5 court; is that correct?</p> <p>6 MR. DANIEL: That's correct. Both</p> <p>7 motions were denied. The judge denied them</p> <p>8 almost immediately.</p> <p>9 I held a second hearing, we were</p> <p>10 trying to discuss the terms of the order, but as</p> <p>11 far as our motion is concerned, we had alleged</p> <p>12 that with no new evidence coming in, the judge's</p> <p>13 decision should stand on the record and should</p> <p>14 be entered now. The judge said no, the ZBA has</p> <p>15 it, they have instructions. Hinsdale's side</p> <p>16 with respect to their motion, those instructions</p> <p>17 are clear enough so both motions are denied. I</p> <p>18 think that's a fair assessment.</p> <p>19 MR. MALINA: I think so.</p> <p>20 Except for the fact that I don't</p> <p>21 think that the manager thought that the order</p> <p>22 was unclear, we were merely bringing the ZBA's</p>	<p style="text-align: right;">103</p> <p>1 Our position on the motion for</p> <p>2 summary determination here stands the same as</p> <p>3 expressed in the motion and I think you will</p> <p>4 recall during the last hearing night here I</p> <p>5 mentioned that it was a concern for exhausting</p> <p>6 remedies and that in my view was a substantial</p> <p>7 part of the judge's ruling on our part.</p> <p>8 You know, they filed a motion for</p> <p>9 clarification and I had approached it from the</p> <p>10 perspective of, well, we are there anyway, if</p> <p>11 they aren't opening the record, let's try the</p> <p>12 motion for summary determination. But Judge</p> <p>13 Sheen also agrees with the remand; we have to</p> <p>14 exhaust what we have going on here before we are</p> <p>15 back in front of him. And how we exhaust that</p> <p>16 procedurally is up to you.</p> <p>17 I think the motion still stands.</p> <p>18 The substance of it hasn't changed. The judge's</p> <p>19 ruling on the substance of our motion for</p> <p>20 summary judgment in his courtroom doesn't affect</p> <p>21 your determination of that motion. You can deny</p> <p>22 it. You can allow the motion, grant the motion.</p>

1 CHAIRMAN NEIMAN: Mr. Malina?

2 MR. MALINA: All I can say is that the
3 judge sent it back to the ZBA saying the ZBA
4 found abandonment and intent is not necessary.

5 I believe intent is necessary. And
6 the ZBA said that even if intent were necessary,
7 there was intent to abandon but only cited the
8 lapse of time. And Judge Sheen said that alone
9 isn't adequate but the ZBA -- it's vague, the

06:51:20PM 10 ZBA may have been relying on more than that and
11 the ZBA should point to those things if the
12 record is not reopened or the ZBA can take new
13 evidence. I'm paraphrasing. You have the
14 order, read the order.

15 So the way I read it and the way we
16 cued it up for you last time was the parties
17 were willing to stipulate that we could proceed
18 on the record. So what I believe should happen
19 is the parties should make arguments as to what
06:51:50PM 20 in the original record supported a finding of
21 abandonment and the ZBA should make up its mind.
22 But the ZBA I believe also is free to disagree

1 with both the parties and feel that more
2 evidence is needed if it chooses. I believe
3 Judge Sheen gave you that authority. We are
4 just not asking for it.

5 MR. DANIEL: On that last point we
6 disagree. I think we have stated very clearly
7 that the ZBA doesn't have investigative or party
8 authority to act, it's a decision maker on
9 issues that are raised between contested
06:52:20PM 10 parties.

11 The ZBA can ask questions of the
12 parties in trying to reach its ruling but the
13 minute the ZBA becomes an investigator or
14 looking for that evidence of intent outside of
15 the record, then we have a different problem
16 because you are the hearing body.

17 CHAIRMAN NEIMAN: How do you square
18 that with the judge's instruction that we are
19 free to reopen the record if we want to?

06:52:44PM 20 MR. DANIEL: I think you have to do it
21 on the request of one of the parties and that's
22 why we filed our motion for summary

1 determination.

2 CHAIRMAN NEIMAN: That's not what the
3 judge said. Not what the judge said, is it?

4 MR. DANIEL: I think when you have
5 interparties administrative proceedings, you
6 have to pay attention to how you reopen the
7 record.

8 CHAIRMAN NEIMAN: Could you answer my
9 question?

06:53:02PM 10 MR. DANIEL: I don't think the judge
11 said that you can reopen the record on your own
12 motion. I think you have the flexibility to do
13 it if it's properly done.

14 CHAIRMAN NEIMAN: Do the board members
15 have any questions?

16 MR. GILTNER: Is that different than
17 what you stated or we discussed the last time?
18 Is this sort of what you are stating different
19 or did we just not address this last time?

06:53:24PM 20 MR. DANIEL: I think it came up last
21 time, but I don't think I have ever agreed that
22 the ZBA on its own accord could decide to reopen

1 the record to look for the intent.

2 I think what we talked about was a
3 response to the reopening of the record if it
4 was going to be reopened to the effect of new
5 notice and a new hearing date within that 15 to
6 30 day period.

7 CHAIRMAN NEIMAN: The judge knew that
8 the parties had stipulated that neither of you
9 wanted the record reopened however; correct?

06:53:54PM 10 MR. DANIEL: Not at the time of the
11 April 20th ruling where the instructions are
12 contained.

13 CHAIRMAN NEIMAN: I'm not asking that.
14 (Member Connelly is now present.)

15 MR. MALINA: No. But he knew it not
16 only on October 5th but he knew it back before
17 our September 16th hearing because that was one
18 of my arguments as to why you didn't need
19 clarification, you know, because the judge knew
06:54:12PM 20 we had stipulated when he set this hearing date
21 and that was one of the points I wanted to make.

22 So, yes, the judge knew about it.

1 I believe that's what the judge's order says.
2 There may be arguments as to why it may not be
3 correct but that's definitely what it says.

4 MR. MOBERLY: On the bottom of page 5
5 and top of page 6 from the court, I'll leave out
6 the part before he smacked you around a little
7 bit.

8 MR. DANIEL: No, you can leave it in.

9 MR. MOBERLY: Okay. I read your motion
10 this morning. You should know better. You know
11 I read everything and I find what you presented
12 that was a matter of law is not accurate.
13 That's irrelevant to the next part. I said, I
14 was expressing no final opinion because I left
15 it up to the board whether they were going to go
16 on record, which if they do I may have one
17 opinion, and if they reopen it up, I may have
18 another opinion but it's premature and it was
19 remanded back to them because they haven't
20 decided the issue. I need them to decide for me
21 to review it.

22 I read that as we can open it up or

1 not open it up at this board's discretion.

2 MR. DANIEL: On the request of the
3 parties.

4 CHAIRMAN NEIMAN: That's not what the
5 court said.

6 Does any board member have any
7 other questions or thoughts?

8 MR. PODLISKA: Well there's a further
9 citation to the record where the court first
10 addressed that at the bottom of page 3 between
11 lines 19 and 23 where he denies both of the
12 motions of the parties and he says, I sent it
13 back to the ZBA for them to determine whether
14 they were going to go on the record as is or
15 take new evidence. Once they reach that
16 decision, then consider the matters.

17 So I would read that to say that
18 it's the board's decision whether to reopen the
19 record and it was the board that closed the
20 record in the first place, so that would be
21 further indication that the board is the one who
22 determines whether the record will be opened or

1 not.

2 Certainly it can act at the request
3 of the parties or the recommendation of the
4 parties, but I don't know that that means, from
5 the way this is worded from the judge, it's not
6 limited to that in my view.

7 MR. DANIEL: I think the record
8 reflects my most strenuous objection to that and
9 I think as Member Moberly mentioned, the judge's
10 concern was primarily exhaustion of what's going
11 on here when it came to entering the summary
12 judgment for us.

13 The last two or three lines of what
14 Mr. Moberly had stated was to the effect of it's
15 at the ZBA, it's premature for me to do
16 something on it now. And I do think you have to
17 think about administrative law, and the civil
18 cases concerning administrative hearing bodies
19 indicate that you proceed in a quasi-judicial
20 capacity, which means you are an arbiter, you
21 are a decisionmaker on the issue. You hear the
22 facts and then on the request of the parties,

1 you rule one way or the other. If you are going
2 to open up the hearing record again for new
3 evidence, who is before you to bring it in?

4 CHAIRMAN NEIMAN: The two of you.

5 MR. DANIEL: Well, I suppose no one has
6 asked to and then there's the question of --

7 MR. MALINA: If we are drawing
8 analogies to other situations procedurally, what
9 I would draw one analogy to is sometimes parties
10 bring cross motions for summary judgment and
11 they by doing that say in each of their opinion
12 that there are no material issues of fact. We
13 agree there aren't any. A judge can disagree
14 with that and force the parties to a trial that
15 neither of them wants. That can happen.

16 And to me that may be what you, as
17 the ZBA, you are viewing this as. You know,
18 most judge's, the ones that like to get cases
19 over with, would feel like if the parties feel
20 that way, I'll go with it, but I don't believe a
21 judge is bound to it.

22 CHAIRMAN NEIMAN: Let's see if we can

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1 make some progress on some practical points.
 2 MIH's motion for summary
 3 disposition was premised on the argument that
 4 the ZBA could not make any finding on the record
 5 as it exists that there was an intent to abandon
 6 the special use.

7 In my view, although the court on
 8 October 5 denied the motion to clarify what its
 9 prior order meant, the court, in fact, did offer
 10 clarification and said we could make any finding
 11 on the record that we wanted to or we could
 12 reopen the record and therefore, I think that
 13 MIH's motion for summary disposition has to be
 14 denied because that's what the judge said both
 15 on October 5 and during the last hearing.

16 Any other thoughts from the board
 17 members on that issue?

18 MS. ENGEL: My reading was the same.
 19 Go back to again the paragraph on page 4 of the
 20 transcript line 15 where it says they, meaning
 21 the ZBA, can review if they decide not to reopen
 22 the record, which leads me to believe that we

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1 would have some authority to do so if we needed
 2 to, they can review the evidence on there and
 3 reach a decision based on the record before
 4 them. So we can reopen it if we need to is what
 5 I took from the transcript.

6 CHAIRMAN NEIMAN: May I hear a motion
 7 regarding MIH's motion for summary disposition?

8 MR. CONNELLY: I make a motion to deny.

9 MS. ENGEL: I'll second the motion.

10 CHAIRMAN NEIMAN: Roll call, please.

11 MS. BRUTON: Member Connelly?

12 MR. CONNELLY: Aye.

13 MS. BRUTON: Member Moberly?

14 MR. MOBERLY: Yes.

15 MS. BRUTON: Member Giltner?

16 MR. GILTNER: Yes.

17 MS. BRUTON: Member Engel?

18 MS. ENGEL: Yes.

19 MS. BRUTON: Member Podliska?

20 MR. PODLIKA: Yes.

21 MS. BRUTON: Chairman Neiman?

22 CHAIRMAN NEIMAN: Yes.

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1 The next issue I think we should
 2 discuss is the standard of proof, burden of
 3 proof. Mr. Daniel submitted a brief on that
 4 point, the village did not.

5 MR. MALINA: Correct.

6 CHAIRMAN NEIMAN: I want to raise one
 7 other possibility as to the applicable standard
 8 of proof. I don't know if either of you have
 9 your codes with you, if not I can read it.
 10 Section 11-502(b) of the Hinsdale Zoning Code.
 11 I'll read it.

12 It's entitled purpose. The appeal
 13 procedure is provided as a safeguard against
 14 arbitrary ill-considered or erroneous
 15 administrative decisions. It is intended to
 16 avoid the need for resort to legal action by
 17 establishing local procedures to review and
 18 correct administrative errors. It is not
 19 however intended as a means to subvert the clear
 20 purposes, meanings or intents of this code, or
 21 the rightful authority of the village manager to
 22 enforce the requirements of this code. To these

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1 ends, the reviewing body should give all proper
 2 deference to the spirit and intent embodied in
 3 the language of this code and to the reasonable
 4 interpretations of that language by those
 5 charged with the administration of this code.

6 Seems to me that although,
 7 Mr. Daniel, your brief was helpful in citing at
 8 least in passing what the judge thought and I
 9 know you were implying some things about what
 10 the judge said about burdens of proof, it seems
 11 to me that -- and I'm really open to discussion
 12 on this one.

13 I don't know that we need to decide
 14 who has the burden of proof. There's a standard
 15 of proof in the code when in doubt, look at the
 16 statute. And that standard, it seems to me, is
 17 in 11-502(b). Was the prior decision of the
 18 village manager arbitrary, ill-considered or
 19 erroneous. If it was, then we reverse it. If
 20 it wasn't, then we uphold it.

21 And it doesn't matter who goes
 22 first or second. I don't think there's burden

1 shifting involved. That's the standard we are
2 held to. Thoughts on that?

3 MR. MOBERLY: I'm just surprised,
4 usually you don't ask the parties to the case
5 what the burden of proof or the standard of
6 proof is.

7 CHAIRMAN NEIMAN: Well, usually it's
8 pretty clear under the law but I'm not sure it
9 is here.

07 03:20PM 10 MR. MOBERLY: That's like asking Honey
11 Boo Boo to be a judge at her own beauty pageant.
12 We should make that decision of what the burden
13 of proof is.

14 CHAIRMAN NEIMAN: I want to make sure
15 the court reporter got that.

16 MR. MOBERLY: Honey Boo Boo, three
17 separate words. It's been canceled though.

18 Here's the burden of proof you have
19 and the applicant has to meet the burden of
20 proof and we give them fair warning.

21 MR. MALINA: If I could just say a
22 couple of things about this.

1 CHAIRMAN NEIMAN: Okay.

2 MR. MALINA: Not to try to throw more
3 dust in it, but I think it is a complex issue in
4 this case because if you read the language that
5 Chairman Neiman was reading, the deference is
6 there but it talks about code interpretation-
7 type things.

8 Here the key issue is it involves
9 code interpretation I think but it also involves
10 factual determinations. And one of the things
11 -- and I just want to be very frank because we
12 all want to avoid reversible error.

13 One of the things I think to
14 consider is that the manager made the decision
15 and I believe under the code that decision is
16 entitled to deference and should not be in a
17 global sense overturned unless it's arbitrary or
18 as the code says, in the words of the code, an
19 unreasonable interpretation.

20 But I do think that in the appeal
21 evidence was taken, sworn testimony that really
22 the manager didn't hear, and so certain things

1 where you are looking at specific testimony, I
2 think the ZBA is the expert on that and it's
3 hard to show deference to a decision when the
4 manager didn't have that same record, if you
5 will, before him at that time. But I do think
6 globally the code's statement of the burden is
7 correct but within that context I think you need
8 to keep that in mind as well.

9 CHAIRMAN NEIMAN: At least it seems to
10 me this is a standard of review. It doesn't
11 define who has the burden of proof but I don't
12 know that we have to decide that.

13 John, any thoughts?

14 MR. PODLISKA: I agree that we don't
15 have to decide whose side has the burden of
16 proof. We are listening to both sides and it's
17 our job then to determine whether there was
18 error in the decision by the village manager.

19 CHAIRMAN NEIMAN: Okay. Kathryn?

20 MS. ENGEL: I agree.

21 CHAIRMAN NEIMAN: Keith?

22 MR. GILTNER: I agree.

1 MR. MOBERLY: Yes.

2 MR. CONNELLY: Yes.

3 CHAIRMAN NEIMAN: I don't know that we
4 have to make a motion on that; it's in the code.

5 Mr. Daniel, would you like to
6 address anything before we move on?

7 MR. DANIEL: I think there was some
8 discussion about the preponderance standard in
9 establishing that there was error last time and
10 to the extent that you raise arbitrary and
11 capricious, that's a bit of a different standard
12 than proving that somebody was wrong by a
13 preponderance.

14 I suppose we have to take a look at
15 it. I don't think it's appropriate to say you
16 have to go beyond a preponderance. I think
17 Mr. Malina and I were both in agreement on the
18 preponderance standard last time that we were
19 here.

20 CHAIRMAN NEIMAN: Certainly it would be
21 the civil standard, but I don't know given that
22 we have a code here that it necessarily applies.

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1 I don't know. But if either of you have any
2 other thoughts on the burden of proof issue,
3 feel free --
4 MR. MALINA: The reason it's a little
5 bit complicated I think is simply because
6 usually when you are talking about standard of
7 review, a body is looking at something where the
8 evidence all was taken below and you are simply
9 looking at the record and you are ruling on the
10 decisions that were made on that evidence.

07:07:04PM

11 The difference here is you are
12 sitting in an appellate capacity but yet you
13 heard live testimony. And so I think you need
14 to take that into account when you make your
15 findings and when you come to any decision.
16 That's all.

17 But I think in the global context,
18 I believe the code does establish your role as a
19 ZBA when something is brought up to you from a
20 decision that's been given to the manager to
21 decide as the code enforcement or code officer.

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22 CHAIRMAN NEIMAN: Yes. As we discussed

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1 last time, I can see if we must make a decision
2 on who has the burden of proof, there are some
3 pretty good arguments going both ways on that
4 one because on the one hand the village's action
5 is a taking of a due process property interest
6 and it seems to me if that's the case, then the
7 village should have that burden and not the
8 property owner.

9 On the other hand, the property
10 owner is the appellant here asking us to reverse
11 the decision and whether that's by an arbitrary,
12 he will consider it an erroneous standard, or
13 some other standard, I don't know. But I think
14 we can review -- we can make our decision either
15 on the record as it exists or if we choose to
16 reopen the record and apply it against that
17 standard. But again, if either of the parties
18 want to submit any further briefs if you guys
19 can find anything on it, feel free.

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20 MR. DANIEL: I don't want to file
21 another brief on it. I think it's important to
22 note that 65 ILCS 5/11-13-12 along with Sections

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1 3 and 4 of the Municipal Zoning Enabling Act
2 created the Zoning Board of Appeals as a relief
3 mechanism to ensure zoning ordinances were
4 constitutional.

5 So there was this appeal process
6 and the state set up the process according to
7 expectations that the ZBA would act upon
8 receiving the evidence in the way contemplated
9 under typical administrative rules in Illinois.

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10 Yes, there is some deference to
11 staff and their interpretation of the code, but
12 is it the standard in Section 11-502(b). It may
13 go too far because again, you have to be careful
14 with that civil preponderance standard because
15 you are evaluating evidence and I think
16 Mr. Malina touched on that.

17 We both know that there was a lot
18 of evidence brought in during the zoning hearing
19 in November primarily of 2008 and that evidence,
20 to my recollection, did not include a delivery
21 from the village manager, a transmittal of the
22 basis for his decision, records that Mr. Cook

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1 relied on and that's kind of where this starts.

2 So you wonder all right, it's all
3 before you on that factual basis. The question
4 is how can you give deference when there was no
5 transmittal of what he relied on.

6 And then on the issue of intent,
7 there's nothing mentioned in the August 5, 2008
8 letter about intent. The letter only refers to
9 the date Amlings closed. So we have nothing on
10 the intent side from the village manager to give
11 deference to.

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12 CHAIRMAN NEIMAN: And to that point,
13 isn't it possible that one of the reasons that
14 the village in your view didn't present any
15 evidence of intent was because the ZBA's code
16 said intent isn't an element but that's since
17 been reversed and if that's the case, then --
18 and your argument is there was no evidence of
19 intent introduced by the village, isn't that a
20 reason to reopen the record, given the fact that
21 now we know from the court's opinion that intent
22 is, in fact, an element, why not reopen the

07:11:18PM

1 record?

2 MR. DANIEL: I think it's a basis to
3 grant the appeal and allow the village manager
4 currently to make the finding concerning intent.
5 Frankly, that's --

6 CHAIRMAN NEIMAN: Based on the facts as
7 they exist today or as they existed in 2008?

8 MR. DANIEL: Well, you have nothing on
9 intent that implicates the ZBA's jurisdiction
10 technically. You have a de novo review and no
11 one coming into the ZBA saying that there was an
12 intent and an administrative staff decision
13 that's appealable to you. You don't have that
14 right now. So the August 5th letter did not
15 address it.

16 MR. MALINA: Actually, I think you do
17 because it's back to you.

18 MR. DANIEL: Well, it's back from the
19 circuit court. The issue is how did it get
20 here? And the appealable matter is the
21 determination of abandonment, okay? It cannot
22 be used as a garden center. That's what's been

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07:12:16PM

1 certainly wasn't.

2 MR. MALINA: Mr. Daniel presented all
3 of his arguments, and there were many about how
4 the 1989 code is invalid, it wasn't passed
5 properly, you have to have intent, you have to
6 -- you know -- and so the ZBA we know that they
7 thought that intent could be relevant, that's
8 why they actually did make the alternate finding
9 that if even intent was required, we find intent
10 to abandon was there. That shows that they were
11 aware of that possibility and wanted to reach an
12 alternate support.

13 What the court said they were
14 inadequate in doing was in pointing to the parts
15 of the record that would support that other than
16 merely the passage of the two years because
17 that -- that was not enough in the court's
18 interpretation of the law in the second
19 district.

20 MR. DANIEL: Well neither is an
21 application for a new development. Neither is
22 marketing it for uses other than a garden

07:13:42PM

07:14:08PM

1 appealed and it must resort to R-4 residential
2 use. That's the other prong in the letter
3 that's been appealed but there is nothing in
4 there on intent and the village manager never
5 had a chance, just like the ZBA in theory never
6 had a chance to consider intent beyond that one
7 little finding.

8 MR. MALINA: Well, and that's where we
9 disagree. Because hen the manager made his
10 decision, he was simply following the letter of
11 the code which states that intent is not
12 relevant. And he didn't have the benefit of
13 testimony and made his decision based on his own
14 investigation of the circumstances at the time
15 involving, you know, all the things that are in
16 the letter.

17 What I do think, what I don't agree
18 with Chairman Neiman, is the idea that the
19 village didn't present any evidence on intent
20 because by the time the hearing --

21 CHAIRMAN NEIMAN: That was Mr. Daniel's
22 argument; we weren't taking that position. I

07:12:48PM

07:13:14PM

1 center. That's also in the court's April 20th
2 opinion.

3 So when I say no intent to abandon,
4 I'm tying it to the definition of what Illinois
5 accepts as intent to abandon. There's no
6 acceptable argument of intent to abandon in the
7 record here right now.

8 MR. MALINA: I think there is.

9 CHAIRMAN NEIMAN: We get that you guys
10 disagree on that one.

11 MR. MALINA: Somewhat vigorously.

12 CHAIRMAN NEIMAN: Okay. I think we
13 don't have to take any vote on going back to the
14 burden of proof, standard of proof issue, but
15 again if the --

16 MR. MALINA: Can I make a suggestion?

17 CHAIRMAN NEIMAN: Please.

18 MR. MALINA: When you finally make
19 whatever determination you make, that would be
20 the place to put whatever you thought was the
21 appropriate standard.

22 CHAIRMAN NEIMAN: Yes. And all I'm

07:14:40PM

07:14:56PM

1 saying --

2 MR. MALINA: In a separate ruling.

3 CHAIRMAN NEIMAN: No, I think I agree
4 with that, at least myself.

5 But given the fact that one of our
6 ongoing criteria in all of these proceedings
7 until it is done in this room is to avoid any
8 further reversible error.

9 If the parties, since we don't have

07:15 28PM 10 our own counsel here, if the parties would like
11 to submit any further briefs on that issue, we
12 would welcome them but there's no requirement
13 that either party do so.

14 Okay. So I think the next logical
15 step is to decide -- is for the board to discuss
16 whether we want to reopen the record.

17 MR. MOBERLY: I would prefer to discuss
18 the merits. A lot of stuff we already have.

19 I'm assuming all of this is in the record. This

07:15 58PM 20 is all record stuff. There's a lot of
21 information we have which to me leads us to a
22 decision.

1 If we get down the road and we say,
2 oh, we don't have enough information, then we
3 open up. I think we are premature to talk about
4 opening up the record until we discuss the
5 merits of the case as they have been presented
6 by both sides.

7 Could we knock off one more simple
8 thing. I think it should be simple. Cassim rug
9 gallery has been mentioned as part of the
07:16 28PM 10 appeal. They have been out of there totally
11 vacated since some time in June. Can we dispose
12 of any issues with Cassim's now because to me
13 the entire thing is going to be about -- we
14 discard the issue, Cassim is a moot point
15 because they have vacated the property so the
16 entire thing becomes was there an intent to
17 abandon the use as a garden center or not.

18 CHAIRMAN NEIMAN: Okay. Does anybody
19 have any -- do the parties, through their
07:16 54PM 20 counsel, have anything to say about the rug
21 gallery having moved out and the effect on the
22 case?

1 MR. DANIEL: I don't. Because I don't
2 believe we should be offering evidence
3 without -- I mentioned it last time. Yes,
4 Cassim is closed, whether it was June, I think
5 it was later, but the question of whether that
6 changes the case, whatever the facts are I don't
7 think it does. The building is still
8 constructed the way it is. The property is
9 still being -- I can't offer new evidence.

07:17 30PM 10 MR. MOBERLY: The court action
11 specifically mentions Cassim. So since that's a
12 moot point now, I just was trying to make the
13 process easier. It's not the end of the world.

14 MR. DANIEL: I don't think it's moot
15 because the court was interested in if the
16 hearing was reopened having an explanation of
17 how the units are interconnected for
18 construction perspective. So physically the
19 building is still as it sat at the time you
07:17 52PM 20 ruled whether Cassim's is there or not.

21 MR. MALINA: The other reason that I
22 think it doesn't have a great bearing on the

1 decision is because you end up back when you say
2 Cassim's is gone, so it's gone.

3 Well that's the issue. Because it
4 also was a legal nonconforming use and we know
5 just because it's not being used this minute,
6 it's not necessarily just by that fact alone
7 lost. And so it remains, to some extent, there
8 under the code until such time as it's no longer
9 a legal nonconforming use because it hasn't
07:18 32PM 10 been -- and if we get that far -- it hasn't been
11 properly maintained. But that's the issue. And
12 the fact that it hasn't been in use for some
13 months isn't sufficient under Judge Sheen's
14 ruling to mean it's gone.

15 CHAIRMAN NEIMAN: Thank you.

16 Any other issues on the effect of
17 the Cassim rug gallery moving out? Okay.

18 So Gary suggested that we talk
19 about what's in the record as a launching point
07:18 06PM 20 for deciding whether we want to reopen the
21 record. Anybody want to begin that discussion?

22 MR. MALINA: May I make a suggestion

1 here if I may?

2 CHAIRMAN NEIMAN: Sure.

3 MR. MALINA: The one thing I would
4 prefer that the ZBA not do on behalf of the
5 manager is to decide how you would come out like
6 on the record and then make a decision. I think
7 it should be if you are going to discuss it, it
8 should be kept more general. Is the record
9 adequate for us to make the determination?

07:19:42PM 10 CHAIRMAN NEIMAN: Oh, I quite agree.
11 We shouldn't be making any decisions on the
12 merits.

13 MR. MALINA: I just wanted to make
14 sure. It sounded like Mr. Moberly was going
15 that way and I wanted to make sure I made my
16 position clear so that there wasn't unfairness
17 to either side.

18 CHAIRMAN NEIMAN: I certainly don't
19 anticipate our making any decision on the merits
07:19:58PM 20 this evening.

21 MR. MALINA: Well, I was hoping, but
22 that's another matter.

1 I'm talking about on the reopening
2 of the record. My position would be that
3 decision should be kept more general in nature
4 rather than talking about the specific evidence
5 and whether it's adequate to sustain or not
6 sustain.

7 CHAIRMAN NEIMAN: Yes. All right. So
8 let me suggest this as a jumping off point.

9 I spent a very long afternoon
07:20:26PM 10 reading the record and I think we discussed last
11 time that the ZBA in 2008 limited both parties'
12 presentations to one hour per side; is that
13 correct?

14 MR. DANIEL: It was limited and it
15 might have been shorter; I'm not sure but it was
16 limited and not enough came in but I think
17 enough was there.

18 CHAIRMAN NEIMAN: When you say not
19 enough came in, what do you mean?

07:20:58PM 20 MR. DANIEL: Well, the intent couldn't
21 have been addressed within the hour. There's
22 plenty that couldn't be addressed by MIH. But

1 at this point given the ruling on intent, we see
2 nothing in the record on intent and I think the
3 objection concerning the record and the
4 limitation was never raised by the village
5 manager. We had raised it, and periodically
6 mentioned it, but we always felt the record was
7 sufficient to sustain our position in the
8 circuit court so it hasn't been a main issue in
9 the circuit court either.

07:21:44PM 10 CHAIRMAN NEIMAN: I recall, Mr. Daniel,
11 from our hearing in September that it was your
12 view that the testimony was uncontradicted that
13 there had been no abandonment; correct?

14 MR. DANIEL: It was that Mr. Horne's
15 testimony was uncontradicted on the issue of
16 intent and the efforts taken to reuse the
17 Amlings space.

18 CHAIRMAN NEIMAN: When I read
19 Mr. Horne's testimony, I kept waiting for
07:22:22PM 20 someone to introduce some exhibits on the issue
21 of how the property was in fact marketed by MIH
22 because it's easy for someone to testify, no

1 really in my heart it was my intent to do
2 something. Contemporaneous documents, on the
3 other hand, would actually demonstrate the
4 parties' intent one way or the other but there
5 were no such documents. And I know the parties
6 disagree on whether or not there was evidence of
7 intent in the record.

8 In my view one reason for us to
9 consider reopening the record was it would be
07:23:04PM 10 for the parties to exchange document requests or
11 subpoenas or issue subpoenas to third parties
12 to actually determine what the contemporaneous
13 documents say about how MIH intended to use the
14 property. Because right now all we have are
15 people coming in and giving sworn testimony.
16 And we have no reason to doubt that testimony.

17 But intent is an ephemeral concept,
18 isn't it? People can say, no, really, I meant
19 to do this, but maybe there might be documents
07:23:48PM 20 confirming that that was, in fact, their intent.
21 Maybe there are documents to the contrary. I'd
22 like to see the documents. Any thoughts?

1 MS. ENGEL: I'm not sure that you can
2 make a decision based on the record we have
3 without those additional -- without any
4 additional information like that.

5 CHAIRMAN NEIMAN: John?

6 MR. PODLISKA: Well, the village in its
7 opening brief on remand sets out what it sees as
8 sufficient evidence that abandonment and one of
9 the first point there is that MIH never marketed
10 the property for a garden center once Amlings
11 vacated the property and instead marketed it as
12 a mixed-use residential and commercial property
13 not as a garden center.

14 Now, I think that contemporaneous
15 documents at the time would be helpful if
16 there's a dispute about that position. Does MIH
17 take a position different on that point from the
18 village or is that a point on which the parties
19 agree?

20 MR. DANIEL: The hearing testimony can
21 be summarized as follows on that issue. MIH
22 owned the property. They were seeking tenants.

1 They had marketed to all the small garden shops.
2 The Home Depots and Lowe's of the world had
3 saturated the market and the small family garden
4 shop business had changed and they weren't
5 opening new centers. So it was difficult to
6 find a specialized tenant despite going to the
7 International Council of Shopping Centers, going
8 to the half a dozen or so A folks that are known
9 in the metro area for having more than one
10 garden center. We are talking about having a
11 second store, a third store.

12 At the same time they were doing
13 that, MIH marketed the property as available for
14 sale or reuse and included in those sale and
15 reuse efforts statements to the effect property
16 available, prime location, could be used for,
17 and they even applied for that mixed-use
18 development at one point in time. That's
19 essentially the testimony on that.

20 I think as far as Mr. Horne's
21 testimony goes, he agreed that there was the
22 alternative marketing for sale for a different

1 use than a garden center. At the same time he
2 was trying to market it for a garden center.

3 MR. CONNELLY: I would ask if you are
4 attempting to market something, wouldn't you
5 make it a little more attractive, cleanup the
6 garbage on the property? In my mind, it doesn't
7 look like it was being marketed.

8 MR. DANIEL: Well, you had a sign at
9 the corner, you had maintenance people coming in
10 to patch the lot. There was your typical
11 insurance, your typical maintenance operations
12 that Mr. Horne had testified to.

13 The area pursuant to discussions
14 with Bo Proczko -- and I'm sticking to the
15 record on this. The testimony was that Bo
16 Proczko when approached by individuals that
17 might have been following a change on street
18 parking within the block.

19 Hinsdale Orthopaedics and ManorCare
20 had approached the village and Bo coordinated a
21 relationship between MIH and the two entities to
22 the west and with the use of the parking lot

1 primarily for those two uses and Cassim's you
2 have, I suppose, the question of how that
3 garbage onsite might be perceived. You also
4 have a fence onsite that whenever the wind blew,
5 it would catch it. That's shown in the record
6 in the site plan. And some of the visible
7 photos showed, I believe, some patchwork, a
8 paper here up against the fence, something like
9 that. And that was the fence surrounding the
10 outdoor sales area, roof covers.

11 They had some open canopy
12 structures out on the west side of the building
13 and according to the record, those were being
14 maintained for a period of time for the purpose
15 of reuse as a garden center. They didn't look
16 good, they needed to be rehabilitated, but
17 because they were remarketing it and another
18 user may or may not want those, or may want to
19 redesign those, they were maintained onsite.

20 And as far as trash goes, I believe that's it.

21 The landscape waste was hauled off.
22 It was bagged when it was mowed and it was

1 maintained from that perspective. I don't know
2 if there's any other waste there.

3 Occasionally, you will have
4 somebody fly dump. Occasionally -- I'm not
5 sure. I think that's the only other testimony
6 in the record on waste. That stops as of 2008.

7 MR. MOBERLY: I just want to draw
8 everybody's attention to -- I pick up on John's
9 point to the -- Hinsdale's opening brief on
10 remand. Bottom on page 4 top of page 5. And
11 this is Mr. Horne's testimony. And I'm assuming
12 it's located in the record or we wouldn't be
13 looking at it here.

14 At the ZBA hearing the testimony of
15 Michael Horne implied that MIH was not searching
16 diligently to replace the garden center use.
17 Mr. Horne testified, kind of like what you said,
18 Mr. Daniel, that a garden center was a tough
19 business in the current real estate climate due
20 to the larger nationwide competitor such as Home
21 Depot and Lowe's.

22 Horne testified he had advertised

1 from the transcript for one without where the
2 quotations are and are not, it would be easy to
3 conclude that that paragraph of the brief is an
4 assassination of the record. Even with the
5 quotes, it is an assassination of the record.

6 It was not that Mr. Horne did not
7 have circulars. That's not what he said. He
8 didn't have them with him. Didn't have them
9 with him at the hearing. That's one thing. He
10 testified to going to ICSC to marketing. He
11 testified to the other things. He testified to
12 going to all the area garden center operators
13 but you are not going to go to Michigan, up 31
14 and say can you open up a second shop in
15 Hinsdale. That works for chocolate but not when
16 you have to haul stuff, okay?

17 CHAIRMAN NEIMAN: Why didn't he have
18 the documents with him?

19 MR. DANIEL: Because testimony is
20 sufficient evidence of the actions of MIH and to
21 the extent that we are discussing why there are
22 no corroborating documents in the record, the

1 the property in a marketing brochure as a major
2 tenant's redevelopment opportunity not for use
3 as a garden center. Mr. Horne also testified
4 that garden center use is on the decline and
5 again it's a challenging segment to find
6 operators that are actually making money.

7 Finally, Horne admitted that MIH
8 had no circulars, advertisement materials or any
9 other print items that would establish MIH's
10 attempt to market the property to garden center
11 tenants. The prior ZBA chairman Mr. Anglin
12 concluded that MIH's marketing material states
13 that it is not to be used as a garden center.

14 This is all in the record saying
15 your client had no intention to market this as a
16 garden center despite what you just sort of
17 said.

18 MR. DANIEL: If I took what Mr. Moberly
19 just stated --

20 MR. MOBERLY: I'm just reading from
21 this document.

22 MR. DANIEL: I know. And I took it

1 testimony standing uncontradicted and against
2 statements such as implied they didn't do enough
3 to market it; he didn't testify to that. He
4 testified to the contrary.

5 MR. MALINA: I have something I'd like
6 to say on this issue because -- and we have
7 gotten into some argument here, but one of the
8 key things that I disagree with is the idea that
9 a witness can say something about his state of
10 mind or intention and that no amount of --
11 nothing can contradict it and override it
12 because how can it.

13 Well we know that the law, if we
14 are attorneys and if we are not, any jury is
15 instructed that there is no difference between
16 direct, circumstantial evidence and they are to
17 give it whatever weight they feel is
18 appropriate. And so if a witness, like a
19 criminal defendant, testified he had no criminal
20 intent but is impeached so that there's a
21 question about it, true, his testimony stands
22 uncontradicted. I didn't intend to abandon

1 this.

2 But you are entitled to look at the
3 circumstantial evidence as well, the whole
4 record, and make a logical determination. And
5 to my mind, that's one of the big things I
6 disagree with about Mr. Daniel's approach in
7 this whole intent issue is that the issue isn't
8 intent to abandon.

9 A legal nonconforming use is
10 different from other zoning uses. By its very
11 nature it demands action. It demands being
12 maintained. The code uses the word it may
13 continue. By its very definition it's not
14 supposed to stop.

15 The law that we are talking about
16 are courts' decisions where it has ceased for a
17 period and that ceasing is contradicted by all
18 kinds of evidence in some cases of how the
19 property owner did not want it to cease, was
20 working to keep that use in play but there was a
21 gap nonetheless and whether the intent to
22 abandon is there.

07:33:10PM

07:33:42PM

1 That is not out of the ordinary and
2 it doesn't show intent to abandon the existing
3 use. It happens all the time where somebody
4 owns property and is considering whether to sell
5 it for another use. Of course it's contingent
6 on other things: Zoning.

7 MR. MALINA: And I agree that the mere
8 exploration of an alternate use if you are at
9 the same time maintaining your legal
10 nonconforming use, should not cause abandonment.

07:35:16PM

11 The policy behind that would be foolish because
12 everyone would be afraid to try to find a real
13 conforming use because they are afraid by even
14 attempting to do it you could lose your
15 nonconforming use.

16 MR. DANIEL: Or have a village attempt
17 to do it as in this case.

18 MR. MALINA: No, the issue here is
19 different, I submit. Because the issue here is
20 there's all kinds of documentary evidence about
21 the efforts they made to market it as not a
22 garden center. What we are missing is the

07:35:36PM

1 So I think the whole approach that
2 I believe is correct is Mr. Daniel's -- the
3 testimony of Mr. Horne is relevant, it's in the
4 record, but it's the whole sum total of the
5 evidence about how this legal nonconforming use
6 was maintained and whether it should have been
7 allowed to continue to maintain, whether Dave
8 Cook, the manager at the time, whether his
9 determination that it was lost was wrong. That
10 the record supports the idea that this garden
11 use despite Amlings being gone and despite a
12 couple of years later it having been vacant,
13 that it really wasn't lost because the
14 maintenance effort, the record supported it
15 despite that.

07:34:18PM

16 MR. DANIEL: See the job of the village
17 manager at the time was to question the
18 evidence. The village manager brought out
19 testimony that yes, in addition to marketing it
20 as a garden center, we had circulars go out for
21 other uses and in fact, we filed a zoning
22 application.

07:34:44PM

1 other.

2 CHAIRMAN NEIMAN: Wait, wait, wait,
3 wait. I spent that very long Sunday afternoon
4 reading the record. I don't recall seeing any
5 documents in the record about them marketing it
6 one way or the other. That's my problem.

7 MR. MALINA: What I was talking about
8 is the zoning effort to have it changed.

9 CHAIRMAN NEIMAN: I think the court
10 decision, I think it was the LaSalle Bank
11 decision if I'm not mistaken, made it -- there
12 was a decision that one of the parties cited in
13 their briefs last month that said just because a
14 landowner applies to have a property rezoned,
15 doesn't mean they have abandoned a special use.

07:36:12PM

16 MR. MALINA: Correct. Just because,
17 right.

18 CHAIRMAN NEIMAN: Just because.

19 I keep coming back to the issue of
20 there are no documents in the record reflecting
21 how the property was being marketed and I
22 can't -- and to Mr. Malina's point, testimony is

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1 one thing that we should give weight to, but
 2 there is other evidence, it seems to me, that is
 3 not in the record, perhaps because of the time
 4 limitations imposed by the ZBA on the parties in
 5 2008, perhaps because the parties hadn't
 6 exchanged document requests, hadn't issued
 7 subpoenas, I don't know why.

8 All I know is we are sitting here
 9 in 2015. We have a decision to make about
 10 whether to reopen the record or not and I don't
 11 know if anybody could make an intelligent
 12 decision on the issue presented on the record as
 13 it exists. And especially given the fact that
 14 the village zoning code at the time said intent
 15 isn't relevant, therefore the village attorney
 16 logically may not have tried to do discovery on
 17 the issue of intent to abandon so the law has
 18 now changed because it's on remand the court
 19 said of course you have to have intent to
 20 abandon.

21 Well, if the standard has changed,
 22 our zoning code has been -- that portion of the

1 zoning code has been found to be illegal, it
 2 seems to me that the village has to have a
 3 chance to present evidence of intent to abandon
 4 because they weren't even thinking about it in
 5 2008 because the code said you don't have to.

6 And more than anything else to my
 7 mind contemporaneous documents will reveal more
 8 about MIH's intent than anything else. If all
 9 their circulars said, great opportunity for a
 10 garden center, then to borrow the court's
 11 language from October 5, then we may rule one
 12 way.

13 If, on the other hand, they said,
 14 great opportunity to build a car dealership or a
 15 shopping center, we may rule another way. I
 16 haven't the faintest idea because those
 17 documents aren't in the record. I want to see
 18 the documents. I'll be quiet now.

19 MR. DANIEL: If I could mention one
 20 thing. You mention the village had the
 21 opportunity to bring that evidence in because
 22 the standard changed.

1 The village manager is telling you
 2 by not asking the record to be reopened, that
 3 she has no further evidence that she would
 4 present and that she thinks the record is
 5 sufficient from her perspective to address it
 6 and that's how the evidence would come in as far
 7 as the advertisements.

8 Now, what's also in the record and
 9 --

10 CHAIRMAN NEIMAN: That's not how the
 11 evidence would come in necessarily, Mr. Daniel,
 12 come on.

13 MR. DANIEL: Well, who's going to
 14 present the evidence?

15 CHAIRMAN NEIMAN: We have the authority
 16 to issue subpoenas. Even if the parties don't
 17 want to go through more discovery and don't want
 18 us to reopen the record, it is, I believe, the
 19 feeling of the ZBA -- I don't want to waste any
 20 more time on this issue -- that the court has
 21 made it abundantly clear that we can reopen the
 22 record if we want to even if the parties don't.

1 Okay?

2 So if we want to reopen the
 3 record -- sorry, let me finish.

4 MR. DANIEL: I'll let you finish.

5 CHAIRMAN NEIMAN: If we want to reopen
 6 the record, then that would allow the parties to
 7 conduct discovery, to produce documents, to
 8 issue subpoenas. The parties have that right
 9 under the code.

10 MR. DANIEL: The parties have that
 11 right under the code. I agree with you on that.

12 CHAIRMAN NEIMAN: The parties have the
 13 right to ask us to issue subpoenas. We have the
 14 right, according to the DuPage County court, to
 15 reopen the record if we want to. The court was
 16 abundantly clear both in August and on October 5
 17 that the parties had stipulated that they didn't
 18 want to reopen the record and the court
 19 nonetheless on October 5 said, if the ZBA wants
 20 to reopen the record, go ahead.

21 MR. DANIEL: The party has to bring the
 22 evidence to you, whether it's through asking for

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1 a subpoena. That's what I'm curious about. I
2 just need to try to figure out what the posture
3 of the ZBA is. Are you changing from factfinder
4 and decisionmaker to investigator and --

5 CHAIRMAN NEIMAN: Mr. Daniel, you have
6 made that argument. We get it, okay? But the
7 court has said we can reopen the record if we
8 want to. We are not doing any investigation.
9 We are just a -- we are the equivalent of a

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10 factfinding body asking for the facts and if we
11 feel like we don't have enough facts, then we
12 could vote, according to the DuPage County
13 court, to reopen the record and ask the parties
14 to give us some more facts.

15 MR. MOBERLY: As a practical matter,
16 nine years have transpired. Where is Mr. Horne?
17 Is he still alive? Is he available? Is
18 Mr. Cook available? I mean, could you produce
19 these circulars and fliers and all the marketing
20 materials that you had somehow dated 2006
21 through 2008?

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22 MR. DANIEL: I'm sure there are records

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1 sitting here talking about reopening a record
2 that was cut short by Chairman Anglin, yes. But
3 within that record on the short time frame given
4 there is testimony from Mr. Horne that has gone
5 without question. No contrary evidence.

6 And that's when you have the
7 question of all right -- once you have contrary
8 evidence, you have a question of who to believe.
9 If you took Mr. Horne's testimony and said, I'm

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10 going to decide this case on Mr. Horne's
11 testimony, that's fine with me. And it probably
12 should be with you because you know from the
13 record that there is -- yes, there is some
14 marketing of the property for an alternative
15 use.

16 And you know from the record that
17 there is marketing of the property for a garden
18 center and that resulted in a few things. A
19 license granted to a holiday seasonal

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20 salesperson that sold some of the affects that
21 Amlings had to use the parking lot. That's in
22 the record. A license filed for 2007 that the

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1 someplace, okay? Even eight years after the
2 fact.

3 MR. MOBERLY: Can the village produce
4 any records on their end?

5 MR. MALINA: Yes. We would comply with
6 whatever the order was.

7 MR. DANIEL: And then you have the
8 entire issue of if you reopen the record, you
9 have interested parties who are very curious to
10 know how this record is going to be reopened and
11 how they have to respond so that all the
12 evidence of intent is there.

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13 So is it for the limited purpose of
14 receiving records? If it is, then the parties
15 are going to go full bore on the issue of intent
16 because I don't think one side or the other is
17 going to let it sit.

18 But the fact of the matter is that
19 no one is asking for this. I am not going to
20 say it any more beyond this. But it is our most
21 strenuous objection that eight years after the
22 fact, seven years after the fact and we are

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1 village never acted on. That is in the record.
2 That's within the time frame.

3 So think about this. You have the
4 results, and then you also have the letter
5 itself issuing concerning none other than a
6 garden center that had partially occupied the
7 building by the time that hearing started.
8 Clovers.

9 MR. CONNELLY: We are making decisions
10 here on what are the facts. I guess what is the
11 harm of having more information to make that
12 decision?

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13 MR. DANIEL: The harm is time. The
14 harm is that you have uncontested testimony.
15 And then the question is when the village
16 manager says, I don't want to bring anything in,
17 I think it indicates to me that they don't have
18 a lot to bring in because their utility records,
19 their billing show, the architectural plans show
20 that these units are interconnected so of course
21 Amlings was maintained. It's only going to hurt
22 the village. If you want to reopen the record,

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1 it's a matter of time, expense and lost
2 opportunity for the owner.

3 CHAIRMAN NEIMAN: I think enough time
4 has past regardless so any reopening of the
5 hearing.

6 MR. MALINA: I have two things I'd like
7 to say if I may at this point.

8 The one is: When parties stipulate
9 to something, it's very unfair to say that means
10 they don't have anything. Parties stipulate to
11 things for all kinds of reasons.

12 But the other thing I wanted to say
13 was this: The one thing I would recommend and
14 what I think we will do if the ZBA does decide
15 to reopen the hearing, because Mr. Daniel
16 alluded to interested parties, that's under the
17 zoning code there are people who have an
18 interest in zoning decisions and we did not
19 republish for this meeting because our view,
20 staff and I, was that it's on remand on a closed
21 record so it's simply part of the court appeal.
22 If more evidence were to be taken, I think the

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1 their case.

2 MR. DANIEL: To one another, correct?
3 And then we determine what to bring to the ZBA.
4 That's what a hearing is.

5 CHAIRMAN NEIMAN: Oh, absolutely. You
6 don't produce them to us. Then you either write
7 briefs or call in witnesses and then we can make
8 that decision.

9 One other passage of the code that
10 I'll cite for reference and the discussion is
11 11-303(d)(2)(e), which says, in determining
12 whether to grant or withhold such rights
13 including presenting witnesses, issuing
14 subpoenas and so on, the discretion of the
15 hearing body shall be governed by the goal of
16 securing all information and opinion relevant
17 and material to its deliberations.

18 I just think given the absence of
19 an intent element when the case was heard in
20 2008 and the unduly restrictive time limitations
21 imposed upon the parties in 2008, I don't think
22 anybody secured all the information. I don't

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1 safe course would be whatever date you pick to
2 publish as if there were a new hearing to
3 indicate to public who may be interested that
4 new evidence on this issue would be taken and
5 that would satisfy that requirement. But it can
6 be dealt with.

7 CHAIRMAN NEIMAN: If we were to reopen
8 the record, I think it would be incumbent on
9 both parties to exchange either document
10 requests or issue subpoenas to each other and to
11 any third parties. Well, we would have -- under
12 the code we have to issue the subpoenas at your
13 request.

14 But if we are going to reopen the
15 record in order to gather relevant documents
16 that either side might have, we can't simply
17 rely on the parties to bring in the records that
18 they want to bring in. We need -- I mean the
19 goal of one party requesting documents from
20 another or subpoenaing documents from another is
21 to require each party to produce both good
22 documents for their case and bad documents for

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07:48:08PM

1 think the ZBA in 2008 secured all the
2 information. It wasn't our job to secure it,
3 but we have to get to the bottom of this some
4 way and I don't know that we get to the bottom
5 of it without reopening the record.

6 Anybody have anything else to say
7 on that issue? Do I hear a motion?

8 MR. GILTNER: Let me ask a question
9 just for clarification.

10 Are you saying that the judge is
11 saying that based on the record, that the ZBA
12 does not have sufficient -- there's not
13 sufficient evidence or do we still have the
14 option to look at the evidence that's been
15 submitted, the testimony that's on the record?

16 CHAIRMAN NEIMAN: I think we absolutely
17 have that option.

18 MR. DANIEL: The judge stated in his
19 opinion, as we have noted over and over again,
20 that the ZBA can determine what to do but as far
21 as the record as it stands today, there is
22 insufficient evidence of intent to abandon.

07:50:28PM

07:50:54PM

1 It's in the opinion. We have quoted over and
2 over again.

3 MR. MOBERLY: He said he didn't find
4 it. He didn't say it was insufficient evidence.

5 CHAIRMAN NEIMAN: He didn't find it.

6 MR. MOBERLY: The exact wording was he
7 didn't find it. He didn't say it wasn't there,
8 he said he didn't find it.

9 MR. DANIEL: Judge Sheen doesn't miss
07:51:16PM 10 things. He doesn't read things casually.

11 MR. GILTNER: So it sounds like there's
12 just a disagreement there, but maybe one thing
13 we can do before we decide to open up the case
14 or not is talk about what is required for us to
15 approve the standard of intent to abandon.

16 Because then if it means marketing
17 documents, we agree that that's going to help or
18 not help, then that would help us determine
19 whether or not we reopen it.

07:51:44PM 20 CHAIRMAN NEIMAN: Well, I think to
21 Mr. Malina's point earlier, I think we can
22 determine whether or not there was intent based

1 on testimony, based on documents, based on any
2 evidence of any kind, circumstantial evidence,
3 anything at all that was presented. So I don't
4 think we are limited to a certain type of
5 evidence in order to find intent. Not that I
6 know of.

7 MR. DANIEL: Can I raise one thing
8 before the ZBA votes on the motion?

9 The case has been pending now since
07:52:14PM 10 2009. The first one filed in January, another
11 one filed in March when there was no decision
12 made. We finally got a decision late in April
13 and there's a third case filed. A fourth case
14 was filed to seek demolition of the building
15 approximately New Year's, was it this year or
16 last year?

17 MR. MALINA: Whenever the roof
18 collapsed.

07:52:40PM 19 MR. DANIEL: So there was a snow load
20 on the roof and it collapsed.

21 In court yesterday actually, Judge
22 Sheen was informed by Jacob Karaca that the

1 village was seeking to uncouple the demolition
2 case from the remainder of the litigation.

3 Also, during the review of
4 documents requested pursuant to a Freedom of
5 Information Act request, there was information
6 to the effect that Mr. Neiman would certainly
7 talk all of our ears off during the process, and
8 I appreciate that reference in emails now, but I
9 need this thing to be efficient and get to the
07:53:18PM 10 point because if the village is on one hand
11 dragging on the issue that Judge Sheen has tied
12 to the demolition decision, the zoning status of
13 the property and this is dragging on and on and
14 on and the village on the other hand is saying,
15 Judge Sheen, we have to demolish immediately, I
16 have a real problem with that. Which again gets
17 back to the question of: How is this going to
18 proceed and respect the fact that somebody has
19 property rights and we are going into a
07:53:48PM 20 contested hearing process with no one having a
21 contest over whether the record will be reopened
22 and you are asking for more. Is this a by the

1 end of the year process? When is the deadline
2 for submitting requests for subpoenas to the
3 parties? When does the chairman issue those?
4 If there's a question --

5 CHAIRMAN NEIMAN: Those are questions
6 we would address after we would vote to reopen
7 the record.

8 MR. DANIEL: But these are all things
9 you have to consider during the reopening
07:54:18PM 10 decision in addition to whether it's true and
11 necessary.

12 CHAIRMAN NEIMAN: Why?

13 MR. DANIEL: Because there's an entire
14 process that follows and scheduling and parties
15 rights are at issue, that's why.

16 MR. GILTNER: Just another
17 clarification.

18 So is your intent to vote tonight
19 and whether or not we reopen the case, reopen
07:54:42PM 20 the record?

21 CHAIRMAN NEIMAN: I think that would be
22 a logical next decision. Because if we are not

1 going to vote to reopen the record, then the
2 next -- either tonight or the next hearing we
3 should deliberate on whether the record as it
4 exists contains sufficient evidence of intent to
5 abandon. We don't have to reopen the record.
6 I'm just one vote. I'm just frustrated by the
7 record.

8 MR. PODLISKA: Before we vote on that,
9 can I ask a question?

07:55:14PM 10 With respect to this marketing of
11 the property as a garden center, not on the
12 issue of whether it was marketed for other
13 purposes, I understand that, but it appears to
14 me from the filings and from what Mr. Daniel you
15 said here a short time ago, there's a difference
16 between the parties as to whether or not there
17 was marketing of this property for use as a
18 garden center whether there were materials that
19 showed that.

07:55:40PM 20 What the village has said in here
21 and quoted from Mr. Horne is that he had no
22 documents showing that. And what you then told

1 us was all that meant was he didn't have them
2 with him at the time he was testifying.

3 So my question would be: Are there
4 documents that show that the property was being
5 marketed as a gardening center? Separate and a
6 part from the marketing of it for some other
7 uses but affirmatively marketing as a garden
8 center.

07:56:18PM 9 MR. DANIEL: I have seen documents
10 marketing it as a garden center to Clovers. I
11 have not seen other documents. I haven't looked
12 for them because the testimony on the issue of
13 doing that marketing has been beyond challenge
14 since 2008. No one -- no one questioned whether
15 Mr. Horne in presenting contrary evidence to
16 Mr. Horne's testimony that he marketed to other
17 garden centers. He listed the garden centers
18 that he reached out to, phone calls, meetings.
19 They are in the record.

07:56:54PM 20 MR. PODLISKA: But if there are
21 documents that show exactly how that marketing
22 was done, I think that would be helpful. And

1 the village is taking the position that the
2 proper way to read his testimony is that there
3 are no said documents. Your statement to us is
4 that he simply didn't have them with him that
5 night.

6 MR. DANIEL: That's a misrepresentation
7 of the record. It's not in the record that he
8 did not have documents to that effect. It was
9 that he did not have them with him the night of
10 the hearing.

11 MR. MALINA: That's not what the
12 testimony is but whatever. It is what it is.

13 MR. DANIEL: It's very clear in
14 Mr. Ruffalo's cross examination, it is
15 abundantly clear that he did not have them on
16 the night of the hearing. Abundantly clear from
17 Mr. Ruffalo's cross examination responses --

07:57:22PM 18 CHAIRMAN NEIMAN: We get your opinion
19 on what the testimony showed. We really do. We
20 have read it. We have heard your argument on
21 it. We get it, okay? We are volunteers here.
22 We would like to make some progress.

1 Kathryn, did you have a question?

2 MS. ENGEL: I just didn't know if there
3 was procedurally a way that we could informally
4 request some of these documents without doing
5 any subpoenaing in an effort to move it along.
6 To have you produce some of that. This board
7 wasn't present in 2008. The code changed. I
8 think we are charged with something that was
9 very different than what was being looked at in
10 2008 when this all began and if perhaps we could
11 see some of that without incurring a tremendous
12 amount of expense or time.

13 CHAIRMAN NEIMAN: Seems to me we can
14 only do that if we reopen the record. We can
15 reopen the record for that limited purpose.

16 MS. ENGEL: Yes.

17 MR. MALINA: You either reopen or you
18 don't. If you reopen, the parties have to react
19 to that in a way --

07:58:48PM 20 CHAIRMAN NEIMAN: Well, we can set
21 perimeters on what additional evidence we would
22 like to hear from the parties but I don't know

1 that limiting it would be necessarily a good
2 idea.

3 MS. ENGEL: Okay. Just trying to find
4 a way to do it to expedite an end.

5 MR. DANIEL: If you happen to reopen
6 the record, the judge gave instructions that I'm
7 not going to try to rephrase but they are pretty
8 clear.

9 If you reopen the record, there are
10 questions about intent that Judge Sheen wanted
11 answered. There are questions about the impact
12 of a decision that there was intent to abandon
13 as to Amlings on the remainder of the shopping
14 center structure.

15 MR. MALINA: Meaning the rug store.

16 MR. DANIEL: And there's at least one
17 other issue in there. But if you reopen it and
18 you don't reopen it for the purposes described
19 by Judge Sheen, I think we are on treacherous
20 ground there.

21 CHAIRMAN NEIMAN: Here's my
22 frustration. We are volunteers. This time

1 comes out of our hide and as a result, I have no
2 particular interest in spending one or more long
3 evenings here hearing further evidence and
4 testimony; but as I read the record, I don't
5 know that there is, in fact, evidence of intent.

6 Given the fact that the court gave
7 us the authority if we wanted to to reopen the
8 record, I think reopening the record, as painful
9 as that might be for us, might actually help
10 reach a true and correct decision on whether
11 there was, in fact, intent to abandon.

12 I think it's also important for the
13 parties to understand, at least in my view, if
14 the other board members disagree with me on
15 this, please jump in. Any evidence that's
16 presented on the question of intent were we to
17 reopen the hearing has to be evidence that
18 occurred before the village manager's decision
19 back in 2008. Anything that happened after that
20 isn't relevant. We are reviewing whether or not
21 the August 5, 2008, decision was proper or not.
22 And so whether or not there was evidence of

1 intent as of August 5, 2008, is the question.

2 Anything that happened after that, not relevant.

3 MR. CONNELLY: If we have the ability
4 to call special meetings in order to expedite
5 this process, I would be willing to accommodate
6 the parties to speed things up.

7 CHAIRMAN NEIMAN: Now -- and in
8 fairness, if we were to reopen, the parties need
9 time to figure out how to phrase their document
10 requests, ask us to issue subpoenas, we issue
11 the subpoenas, the subpoenaed parties need time
12 to respond and so that in all probability
13 wouldn't happen by our November meeting. I
14 don't know that the idea of a mid December
15 meeting that lasts until midnight appeals to
16 anybody, but if this spills over until the new
17 year, it would be unfortunate but the property
18 has been sitting there since 2006; I don't think
19 another couple of months is going to kill
20 anybody.

21 MR. GILTNER: So I haven't looked at
22 the record as closely as you have, Bob, but I

1 look at the statement from the ZBA's decision
2 and it states, this is because the length of
3 time that MIH ceased to use the property as a
4 garden center, coupled with all of MIH's acts
5 that were inconsistent with continuing the
6 nonconforming use, evidence of clear intent
7 discontinue abandon the use of the property as a
8 garden center.

9 So with Gary's suggestion of seeing
10 if we can come to some resolution before opening
11 the case, doing that, see if we can do that
12 relatively quickly, as a way to, you know, not
13 get into the complications of reopening the
14 record.

15 CHAIRMAN NEIMAN: Sure. I'm open to
16 the suggestion. I think the parties' briefs
17 filed last month tried to make their best
18 arguments on whether or not there was, in fact,
19 evidence of intent to abandon in the record.
20 And so I guess we could first discuss more
21 whether there is evidence of intent sufficient
22 to uphold the village manager's decision.

1 MS. ENGEL: Procedurally how do we do
2 that? Do we just say we would like another
3 30 days to review the documents? I mean,
4 procedurally --

5 CHAIRMAN NEIMAN: Well, we could do
6 that. We could certainly choose to say, okay,
7 before we reopen the record, a valid suggestion,
8 all the board members go home one more time, do
9 a little more homework, review the record, and
10 we can come back and point to it.

11 Now, we don't have a dog in this
12 fight. We are just trying to get to a correct
13 decision and --

14 MR. MALINA: May I make a suggestion?

15 CHAIRMAN NEIMAN: Please.

16 MR. MALINA: Referring back to what I
17 said before that as you make your decision as to
18 whether to reopen or not, the question should
19 be, I believe, in each of your minds is is the
20 record that we were remanded sufficient to make
21 a determination on the issue of intent either
22 way.

1 If -- and I think it's appropriate
2 for each of you to reach that conclusion in
3 order to decide that issue and if some of you
4 feel like you haven't done it yet, I think
5 that's a valid reason to postpone making that
6 decision because I think each of you should have
7 a comfort level that this record is adequate for
8 me to do my job that the court has remanded this
9 case, which we were not involved with to make a
10 decision. Rather than can we affirm, can we
11 deny, is the record sufficient? And then if
12 each of you feels it is or it isn't, then the
13 majority would rule and I don't know the
14 minority would just have to react accordingly.
15 If you got more than you thought you needed,
16 well, that's okay. If you got less, then you
17 are sort of in a bind. But I think that's the
18 issue you have to face.

19 CHAIRMAN NEIMAN: I think that's a very
20 good suggestion. So I guess the question to the
21 board members is who needs more time to look at
22 it?

1 MR. CONNELLY: I would like more time.

2 MS. ENGEL: Yes, I would like some more
3 time.

4 MR. MOBERLY: So your Sunday afternoon
5 deep dive, you found good stuff in there? I
6 spent many, many hours on the arguments from
7 both sides and I'm relying very heavily on that.
8 I'm assuming they were fair when they cite the
9 record.

10 CHAIRMAN NEIMAN: Yes. There was --

11 MR. MOBERLY: I think based on these
12 arguments, I could vote right now but it sounds
13 like the rest of you don't have the comfort
14 level that's there yet.

15 CHAIRMAN NEIMAN: The beauty of working
16 together, whether it's the ZBA or working in a
17 corporation or a law firm or being on a jury is
18 collectively we are smarter than we are
19 individually.

20 I reviewed the record a certain
21 way. Doesn't mean I'm right. Doesn't mean the
22 evidence isn't there. The judge reviewed it.

1 He made it pretty clear that he didn't find any
2 evidence of intent but asked us if we could find
3 evidence of intent sufficient to uphold the
4 village manager's decision, then point me to it
5 and we will go from there.

6 My concern, again, we now have to
7 address the evidence of intent, whether or not
8 there's evidence of intent, and that wasn't a
9 part of the zoning code at the time and to my
10 mind, people -- I'm repeating myself, so forgive
11 me.

12 People say, you know, quoting Jimmy
13 Carter, I had lust in my heart. Okay, fine. I
14 had no intent to abandon; I swear to God. That
15 is something that we must consider because that
16 is sworn testimony.

17 There was -- there might be
18 documents that confirm that. There might be
19 documents that contradict that. Beats me.
20 That's my problem. But if there's a single
21 board member who wants more time to review the
22 record, let's give ourselves time to review the

1 record and come back next month and talk about
2 it. I have no problem with that at all. Do I
3 hear a motion?

4 MR. MOBERLY: Motion to continue our
5 deliberations at the next regularly scheduled
6 meeting of the Zoning Board of Appeals.

7 MR. MALINA: Can I bring something up?

8 CHAIRMAN NEIMAN: Yes.

9 MR. MALINA: This is a personal thing.

08:09:30PM 10 Is that next regularly scheduled
11 meeting the Wednesday before November 22nd?

12 MS. ENGEL: Yes.

13 CHAIRMAN NEIMAN: Is that the Wednesday
14 before Thanksgiving?

15 MR. MALINA: No, but it's this. I play
16 trombone and I play in an orchestra and that's
17 the final rehearsal before a concert on
18 November 22nd.

19 CHAIRMAN NEIMAN: We will be happy to
08:09:56PM 20 accommodate any parties schedule.

21 MR. MALINA: There's a way to deal with
22 it though because I'm not sure when we could

1 start but if you are only going to be doing
2 that, if you were to reopen the hearing we would
3 have to publish, if we could do 6, as long as
4 I'm out by --

5 CHAIRMAN NEIMAN: Can you bring the
6 trombone?

7 MR. MALINA: I will bring documentary
8 and physical evidence to support my statement to
9 you tonight that I'm a trombone player.

08:10:22PM 10 CHAIRMAN NEIMAN: Chris, we have pretty
11 broad discretion. Just because we normally hold
12 it on the third Wednesday doesn't mean we have
13 to. We can hold it on a different day.

14 MS. BRUTON: That's correct.

15 MR. MALINA: Right. You just have to
16 publish as a special meeting and limit it to the
17 items on the agenda.

18 CHAIRMAN NEIMAN: So why rush to your
19 rehearsal. We can pick a day that's convenient
08:10:44PM 20 for both parties and for all of us.

21 MS. ENGEL: I don't think I need a
22 month either. It might be sufficient to have

1 another week or two. I don't necessarily think
2 I need --

3 CHAIRMAN NEIMAN: So we could call a
4 special meeting to discuss it.

5 MR. BRUTON: Yes.

6 MR. MOBERLY: And that would be all we
7 discuss. We wouldn't bring in garage and fence
8 conversations and all those different things we
9 do.

08:11:08PM 10 CHAIRMAN NEIMAN: Okay. Is the
11 consensus that there's an appetite to hold a
12 special meeting in a couple of weeks?

13 MR. PODLISKA: Yes.

14 MR. GILTNER: Yes.

15 CHAIRMAN NEIMAN: All right.

16 Let's hear a motion on that one.

17 MR. MOBERLY: I'll try the motion
18 again.

19 Motion to continue this hearing
08:11:22PM 20 further at a special meeting of the ZBA to be
21 determined by -- the date and time and we will
22 spend more time going through the entire record

1 specifically looking for intent or lack of
2 intent to abandon the property.

3 MS. ENGEL: I'll second the motion.

4 CHAIRMAN NEIMAN: Roll call, please.

5 MS. BRUTON: Member Connolly?

6 MR. CONNELLY: Aye.

7 MS. BRUTON: Member Moberly?

8 MR. MOBERLY: Yes.

9 MS. BRUTON: Member Giltner?

08:11:50PM 10 MR. GILTNER: Yes.

11 MS. BRUTON: Member Engel?

12 MS. ENGEL: Yes.

13 MS. BRUTON: Member Podliska?

14 MR. PODLISKA: Yes.

15 MS. BRUTON: Chairman Neiman?

16 CHAIRMAN NEIMAN: Yes.

17 Shall we try to choose a date for
18 this special meeting now?

19 MS. BRUTON: We could.

08:12:08PM 20 CHAIRMAN NEIMAN: Let's ask the parties
21 if there are any dates in the next couple of
22 weeks when they are not available.

1 MR. MALINA: I can do the 3rd or 5th.
 2 MR. DANIEL: The 3rd or 5th is fine.
 3 MS. BRUTON: We have a board meeting.
 4 MR. MALINA: The 12th. Is that a
 5 possibility?
 6 MS. GARGANO: I'm unavailable on the
 7 12th but you can continue without me.
 8 MR. MOBERLY: I think we are locking it
 9 in right now.
 10 CHAIRMAN NEIMAN: At what time, 6:30?
 11 Okay. So, Chris, you will do whatever magic you
 12 have to do.
 13 MS. BRUTON: Yes. I'll send you all an
 14 email tomorrow to confirm the date and time and
 15 then I will publish accordingly and prepare an
 16 agenda.
 17 MR. DANIEL: Chairman Neiman, can I ask
 18 one question about the 12th?
 19 CHAIRMAN NEIMAN: Yes.
 20 MR. DANIEL: Are you still anticipating
 21 that if you choose not to reopen the record that
 22 the parties would make their arguments that

1 night?
 2 MR. CONNELLY: It's a possibility.
 3 CHAIRMAN NEIMAN: I think you should be
 4 prepared.
 5 MR. MALINA: I think that's a good
 6 idea. I'm agreeing with you. We agree about
 7 that.
 8 MR. PODLISKA: Yes, that's what both of
 9 you prefer to do, right?
 10 MR. MALINA: Yes.
 11 CHAIRMAN NEIMAN: Next stop Middle East
 12 peace. Thank you.
 13 (WHICH said hearing was
 14 continued to November 12,
 15 2015 at 6:30 p.m.)
 16
 17
 18
 19
 20
 21
 22

1 STATE OF ILLINOIS)
) ss:
 2 COUNTY OF DU PAGE)
 3 I, KATHLEEN W. BONO, Certified
 4 Shorthand Reporter, Notary Public in and for the
 5 County DuPage, State of Illinois, do hereby
 6 certify that previous to the commencement of the
 7 examination and testimony of the various
 8 witnesses herein, they were duly sworn by me to
 9 testify the truth in relation to the matters
 10 pertaining hereto; that the testimony given by
 11 said witnesses was reduced to writing by means
 12 of shorthand and thereafter transcribed into
 13 typewritten form; and that the foregoing is a
 14 true, correct and complete transcript of my
 15 shorthand notes so taken aforesaid.
 16 IN TESTIMONY WHEREOF I have
 17 hereunto set my hand and affixed my notarial
 18 seal this 5th day of November, A.D. 2015.
 19
 20
 21 KATHLEEN W. BONO,
 C.S.R. No. 84-1423,
 Notary Public, DuPage County
 22 237 South Wisconsin Avenue,
 Addison, IL 60101-3837

**VILLAGE OF HINSDALE
ZONING BOARD OF APPEALS
MINUTES OF THE SPECIAL MEETING
November 9, 2015**

1. CALL TO ORDER

Chairman Bob Neiman called the specially scheduled meeting of the Zoning Board of Appeals to order on Monday, November 9, 2015 at 6:32 p.m. in Memorial Hall of the Memorial Building, 19 E. Chicago Avenue, Hinsdale, Illinois.

2. ROLL CALL

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

Absent: Member Kathryn Engel

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

3. RECEIPT OF APPEARANCES – None

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

5. PUBLIC HEARINGS

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

Mr. Mark Daniel, representing MIH, and Mr. Lance Malina, representing the Village Manager, approached the Board.

Chairman Neiman stated that the Board, at their meeting of October 28th, voted to give themselves extra time to review the record. He expressed his frustration with further review of the record inasmuch as he can't find some of the exhibits that were referenced in the opening briefs as evidence of intent or no intent to abandon, because of the way the record was reproduced. Additionally, in reviewing the briefs, neither of the attorneys attached the records to which they cited. He suggested the attorneys take the existing briefs, find the documents that are cited in the record, and resubmit the briefs with numbered exhibits and highlighting the relevant portions of those exhibits as would be done if the briefs were being submitted to a court. He pointed out there are also some passages in both briefs where it is asserted that the record is clear that it says x,y or z, but there are no citations to the record at all. He feels this would be helpful to the Board members to decide the matter before them.

In response to a question from Member Connelly, Chairman Neiman clarified that the Board is clearer on standard of proof than the burden of

1 proof. Although, if the Board accepts the standard of proof as outlined in
2 the code, he believes that either the level of proof is shown or it's not, on
3 the question of intent to abandon in the record.

4 Discussion followed between Mr. Malina and Mr. Daniel with respect to a
5 mutually agreeable date to meet at Village Hall to review the condition of
6 the record. They believe they can get the requested revisions to their
7 materials completed in ten days. They agreed to resubmit to the ZBA on
8 November 19th.

9 In response to a question from Member Biggert, discussion followed
10 regarding what is intent to abandon, various scenarios were posed
11 involving property maintenance, applications for re-zoning (a map
12 amendment) and whether or not the property is occupied by the non-
13 conforming use at that time. Mr. Malina stated these things would be
14 addressed by him in detail during arguments, but did state that timing alone
15 isn't enough; it is the totality of circumstances.

16 It was also confirmed that the Cassim rug business was allowed to operate
17 at that location because it was part of the home furnishings portion of the
18 special uses that were originally authorized in 1966. Mr. Malina stated the
19 interpretation of the code to date states that if the non-conforming structure
20 is destroyed, it cannot be rebuilt because the only structure that can be
21 rebuilt there, as of right, is an R-4 structure. Mr. Daniel believes the owner
22 could reduce the size of the building, and tenants with the uses as outlined
23 in 1966 would be allowed. Discussion followed regarding changes to the
24 existing structure.

25 Member Biggert asked about the parking lot on the site being used by
26 Hinsdale Orthopedics and Manor Care. Mr. Malina said permission for use
27 of the parking lot as described is part of a settlement; the Village and MIH
28 agree the parking lot can be used by these businesses until such time as
29 the other matter is settled. Member Podliska confirmed this parking issue
30 has no impact on the remand. Director of Community Development Robb
31 McGinnis said that both of the businesses parking in that lot are conforming
32 uses for their respective zoning lots.

33 Discussion followed as to whether or not advertising the special use
34 property for a non-conforming use only is indicative of intent to abandon.
35

36 **6. NEW BUSINESS – None**

37
38 **7. OTHER BUSINESS – None**

39
40 **8. ADJOURNMENT**

41 With no further business before the Zoning Board of Appeals, Member Biggert
42 made a motion to **adjourn the meeting of the Zoning Board of Appeals of**
43 **November 9, 2015.** Member Podliska seconded the motion.
44

45 **AYES:** Members Connelly, Moberly, Giltner, Biggert, Podliska and Chairman
46 Neiman

NAYS: None

ABSTAIN: None

ABSENT: Member Engel

Motion carried.

Chairman Neiman declared the meeting adjourned at 7:18 p.m.

Christine M. Bruton
Village Clerk

Approved: _____

**VILLAGE OF HINSDALE
ZONING BOARD OF APPEALS
MINUTES OF THE MEETING
November 18, 2015**

1. CALL TO ORDER

Chairman Bob Neiman called the regularly scheduled meeting of the Zoning Board of Appeals to order on Monday, November 18, 2015 at 6:30 p.m. in Memorial Hall of the Memorial Building, 19 E. Chicago Avenue, Hinsdale, Illinois. On behalf of the Board, Chairman Neiman sent best wishes for a speedy recovery from a recent illness to Member Gary Moberly.

2. ROLL CALL

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

Absent: Member Gary Moberly

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

3. RECEIPT OF APPEARANCES

Court Reporter Kathy Bono administered the oath to all those wishing to speak during the public hearing.

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

5. PUBLIC HEARINGS

a) V-05-15, 718 W. 4th Street

Mr. Pat Magner, architect for the project, and Mr. Brett Conway, homeowner, addressed the Board.

Mr. Conway stated his is a family of five and when they bought the home in 2001, he and his wife had no children. He said this is a three bedroom English Tudor built in the 1920's that he would like to expand to accommodate his growing family. He will keep the architectural details of the structure and has provided the Board with evidence of neighbor support for the project.

Mr. Magner explained the issue is meeting building coverage. This is a pre-code structure, built before the zoning ordinance was in existence. The existing lot area is 5,781 square feet. Allowable building coverage is 1,445' square feet; the existing building and garage already cover 1,360' square feet. The lot is non-conforming in that the setback on the corner side yard is 10.5' feet, and the ordinance requires 20' feet. The Bruner side is 35' feet and meets requirements. The building can maintain a 6' foot setback

1 on the south side; they would like to extend the second level cantilever. He
2 described the existing layout of the 1,877' square foot home. They are
3 requesting an increase of 263' square feet of building coverage.

4 Mr. Magner addressed the required standards for approval. He said there
5 are only six houses with lots of this size within a multiple block radius, the
6 lot was platted over 90 years ago and the house is similarly old. The
7 requested building coverage is not out of character to other area properties,
8 and the proposed addition will be in harmony with the surrounding
9 neighborhood. This project is not detrimental to the public welfare and
10 won't impair an adequate supply of light or air to the properties in the
11 vicinity; congestion in the public streets will not be affected. There is no
12 increase of danger from flood or fire; public utilities will not be taxed.

13
14 Mr. Michael Parks of 405 S. Bruner, addressed the Board. He stated he is
15 the next door neighbor and supports these positive improvements, his only
16 concern is drainage. He understands a tree will be removed and he wants
17 to make sure there is a drainage plan. Mr. Magner said the Building
18 Department has a requirement that if 10% or more of footprint of the
19 existing building is added or changed, they are required to provide a
20 grading and drainage plan prepared by a civil engineer that indicates the
21 direction of storm water. This is to ensure water run-off does not go on
22 neighboring property. When the final grading is done, the contractor has to
23 shoot the grades and provide an as-built drawing to make sure it's done
24 properly.

25 Mr. Parks said he is comforted by the as-built requirement. Chairman
26 Neiman asked about the removal of the tree. Mr. Conway said it is an
27 older, large tree, but is on the east side of the house on the lower end of a
28 slope. Mr. McGinnis noted there is a requirement for a tree plan, too.

29
30 Member Engel moved to **close the Public Hearing for V-05-15, 718 W.**
31 **Fourth Street.** Member Connelly seconded the motion.

32
33 **AYES:** Members Connelly, Giltner, Biggert, Engel, Podliska and Chairman
34 Neiman

35 **NAYS:** None

36 **ABSTAIN:** None

37 **ABSENT:** Member Moberly

38
39 Motion carried.
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DELIBERATIONS

Chairman Neiman reminded the Board that this is a recommendation to the Village Board, not a ZBA approval. Mr. McGinnis explained the ZBA has limited authority with respect to building coverage, and four positive votes are required to move this matter forward.

Member Biggert commented that he believes the applicant has done a nice job with the architectural layout for the house and appreciates that this is a remodel, not a tear-down. Member Engel believes the standards for approval have been met sufficiently. Member Giltner agreed, and noted the unique size of the lot. Member Connelly moved to **approve the recommendation to the Village Board of Trustees the variation request known as V-05-15, 718 W. Fourth Street.** Member Engel seconded the motion.

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

NAYS: None

ABSTAIN: None

ABSENT: Member Moberly

Motion carried.

Chairman Neiman reiterated the standards for approval and why the Board believes they have been met as follows:

1. **Unique physical condition:** the subject property lot dimensions are smaller than most in the surrounding area.
2. **Not self-created:** the lot has existed for 60-70 years, before the current owner lived there.
3. **No denial of any substantial right:** given smaller lot size, to deny a requested increase of only 4%, would be to deny the owner his substantial right
4. **Not merely a special privilege:** the limitations created by Village Code does not allow for the expansion of this smaller lot to what would be allowable with a bigger lot.
5. **Variation consistent with code and planning purposes, not out of character:** This small 400 square foot addition will not result in the development of the site in a manner that would be out of character with the neighborhood and has been designed to be consistent with the existing building.
6. **Consistent w/ character of area:** Yes, for the same reasons as cited above.
7. **No other remedy:** The Board does not believe there is any other remedy that would allow the expansion of this home.

Chairman Neiman also noted the lack of opposition from neighbors. For those reasons this Board recommends the Village Board of Trustees approve this variation.

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

Chairman Neiman noted the Board is still awaiting annotated briefs from the parties, and will schedule another meeting upon receipt of those briefs.

6. NEW BUSINESS – None

7. OTHER BUSINESS – None

8. ADJOURNMENT

With no further business before the Zoning Board of Appeals, Member Engel made a motion to **adjourn the meeting of the Zoning Board of Appeals of November 18, 2015**. Member Podliska seconded the motion.

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

NAYS: None

ABSTAIN: None

ABSENT: Member Moberly

Motion carried.

Chairman Neiman declared the meeting adjourned at 6:57 p.m.

Approved: _____

Christine M. Bruton
Village Clerk

VILLAGE OF HINSDALE
ZONING BOARD OF APPEALS

MIH, LLC,)	
)	
Petitioner,)	ZBA Case No. APP.-03-08
)	
v.)	On Remand from the Circuit Court
)	of DuPage County, Case No. 2009 CH 310
ANGLIN, et al.,)	(Consolidated)
)	
Respondents.)	

FINAL ORDER

For over ten years, Petitioner MIH has owned the Amlings Flowerland site located at 540 W. Ogden Avenue in Hinsdale subject to a non-conforming legal use granted by the Village to the prior owners, allowing the owner of the site to use it as a garden center. Such a non-conforming legal use constitutes a constitutionally protected property interest which the Village cannot take without due process.

The site remained vacant after Amlings moved out in 2006. In 2008, the Village Manager denied an occupancy permit for a new garden center tenant, determining that MIH had discontinued and abandoned its non-conforming legal use by failing to use the site as a garden center for more than six months. The Hinsdale Zoning Code passed in 1989 allowed the Village to make such a determination if the owner had failed for more than six months to use any property with a legal non-conforming use designation in keeping with that designation. The Zoning Code did not, however, require a finding that the property owner intended to discontinue or abandon its legal non-conforming use.

MIH appealed the Village's determination to the Hinsdale ZBA in 2008. After an evidentiary hearing, the ZBA affirmed the Village's determination in April 2009, and held that

by failing to use the property as a garden center for more than six months, MIH had lost its non-conforming legal use.

MIH then timely filed an administrative review Complaint with the DuPage County Circuit Court. In April 2015, the Court reversed parts of the ZBA's 2009 decision. The Court held that the mere passage of time alone wasn't enough for the Village to take MIH's non-conforming legal use. The Court held that applicable case law required a finding that MIH *intended* to abandon its non-conforming legal use as a garden center. The Court therefore remanded the case to the ZBA to re-examine the record from the ZBA's 2008-09 hearing to determine if it contained evidence of MIH's intent to discontinue and abandon its non-conforming legal use existed in that record, and to decide the correct amount of attorneys' fees and costs that MIH should pay the Village under the applicable Village ordinance. (April 2015 Court Order at 1-3, 14-17, 18-25).

The Amlings site hasn't been used as a garden center since the ZBA last heard this case in 2009. But on remand, the ZBA cannot consider any facts not already in the record of its 2008-09 hearing.

From September 2015 through January 2016, the ZBA held several hearings to consider the questions that the Court ordered the ZBA to answer. The parties submitted detailed briefs with exhibits from the 2008-09 record. Neither of the parties clearly defined what constitutes evidence of intent to discontinue or abandon a non-conforming legal use sufficient to meet due process standards, apparently because Illinois courts themselves have not clearly defined that standard.

The parties' briefs and the ZBA's 2015 and 2016 hearing transcripts summarize the parties' positions and the ZBA's deliberations on the intent issue and the fees and costs issue. The ZBA incorporates those briefs and transcripts by reference.

For reasons stated in the January 20, 2016 ZBA hearing transcripts, the ZBA voted 5-2 that the 2008-09 hearing record did not contain sufficient evidence of MIH's intent to discontinue or abandon its legal non-conforming use as a garden center.

The parties stipulated and the ZBA agreed during the September 16, 2015 ZBA hearing that MIH paid the Village \$65,627.23 in attorneys' fees and costs, but that based upon the Court's April 2015 Order, MIH should have only paid the Village \$3,569.25, and that the Village should therefore refund to MIH \$62,031.08.

This Order is final and subject to administrative review.

Hinsdale Zoning Board of Appeals

By: _____
Robert K. Neiman, Chairman

Dated: February 17, 2016

8a

MEMORANDUM

TO: Chairman Neiman and Members of the Zoning Board of Appeals

FROM: Robert McGinnis MCP
Director of Community Development/Building Commissioner *RM*

DATE: February 9, 2016

RE: Zoning Variation – V-01-16; 312 Phillippa Street

In this application for variation, the applicant requests relief from the maximum Building Coverage and maximum Floor Area Ratio (FAR) requirements set forth in section 3-110(E&F) for the construction of a detached two car garage. The specific request is for 224 square feet of relief on Building Coverage and 65 square feet of FAR. Additionally, the applicant is requesting that the exception set forth in 10-104(B)(6) be modified to apply to a garage constructed in 1950 rather than prior to 1950.

This property is located in the R-4 Residential District in the Village of Hinsdale and is located on the west side of Phillippa Street between Ravine and Hickory. The property has a frontage of approximately 51', a depth of approximately 131.75', and a total square footage of approximately 6,725. The maximum allowable FAR is 2,800 square feet; the maximum allowable building coverage is 25% or approximately 1,681 square feet, and the total allowable lot coverage is 60% or approximately 4,035 square feet.

It should be noted that this request was considered and approved last year (V-09-14). The original application did not include a request for additional FAR. The new request, if approved, will move on to the Board of Trustees as a recommendation as the Zoning Board of Appeals does not have final authority on this request per 11-503E. A copy of the Final Decision and approving Ordinance is attached.

cc: Kathleen A. Gargano, Village Manager
Zoning file V-01-16

VILLAGE OF HINSDALE

ORDINANCE NO. O2015-11

**AN ORDINANCE APPROVING A BUILDING COVERAGE VARIATION FOR
PROPERTY LOCATED IN THE R-4 SINGLE-FAMILY ZONING DISTRICT AT 312
PHILLIPPA STREET – ZBA CASE NUMBER V-09-14**

WHEREAS, the Village of Hinsdale received an application (the “Application”) requesting a three hundred thirty three (333) square foot variation from the building coverage requirements set forth in Section 3-110F of the Hinsdale Zoning Ordinance (“Zoning Ordinance”) in order to allow for the construction of a detached two-car garage. The residence is located at 312 Phillippa Street, Hinsdale, Illinois (the “Subject Property”), and the Application was filed by Amy Duong Kim, as Trustee (the “Applicant”). The Subject Property is legally described in Exhibit A attached hereto and made a part hereof; and

WHEREAS, the Application has been referred to the Zoning Board of Appeals of the Village, and has been processed in accordance with the Zoning Ordinance, as amended; and

WHEREAS, the Subject Property is located in the Village’s R-4 Single-Family Zoning District and is currently improved with a single-family home. The Applicant is proposing to construct a detached garage in order to facilitate enclosed storage for two (2) vehicles and the variation is necessary in order for the construction to occur; and

WHEREAS, on January 22, 2015, the Zoning Board of Appeals of the Village of Hinsdale held a public hearing pursuant to notice given in accordance with State law and the Zoning Ordinance, relative to the variation request; and

WHEREAS, the Zoning Board of Appeals, after considering all of the testimony and evidence presented at the public hearing, recommended approval of the requested variation on a vote of five (5) in favor, none opposed and two (2) absent; and

WHEREAS, the Zoning Board of Appeals has filed its report of Findings and Recommendation regarding the variation in Case Number V-06-13 with the President and Board of Trustees, a copy of which is attached hereto as Exhibit B and made a part hereof; and

WHEREAS, the President and Board of Trustees of the Village of Hinsdale have reviewed and duly considered the Findings and Recommendation of the Zoning Board of Appeals, and all of the materials, facts, and circumstances related to the Application; and

WHEREAS, the President and Board of Trustees find that the Application satisfies the standards established in Sections 11-503 of the Hinsdale Zoning Ordinance governing variations.

NOW, THEREFORE, BE IT ORDAINED by the President and Board of Trustees of the Village of Hinsdale, DuPage and Cook Counties and State of Illinois, as follows:

SECTION 1: Recitals. The foregoing recitals are incorporated into this Ordinance by this reference as findings of the President and Board of Trustees.

SECTION 2: Adoption of Findings and Recommendation. The President and Board of Trustees of the Village of Hinsdale approve and adopt the findings and recommendation of the Zoning Board of Appeals, a copy of which is attached hereto as **Exhibit B** and made a part hereof, and incorporate such findings and recommendation herein by reference as if fully set forth herein.

SECTION 3: Variation. The President and Board of Trustees, acting pursuant to the authority vested in it by the laws of the State of Illinois and Subsection 11-503(A) of the Hinsdale Zoning Ordinance, grant a variation to the following Section of the Zoning Ordinance:

- 3-110(F), to allow the total amount of building coverage on the Subject Property to exceed by three hundred and thirty three (333) square feet the maximum allowed for a property in the R-4 Single-Family Zoning District in order to allow the construction of a two-car detached garage at the Subject Property commonly known as 312 Phillipa Street and legally described in **Exhibit A** attached hereto and made a part hereof.

SECTION 4: Severability and Repeal of Inconsistent Ordinances. If any section, paragraph, clause or provision of this Ordinance shall be held invalid, the invalidity of such section, paragraph, clause or provision shall not affect any of the other provisions of this Ordinance, and all ordinances, resolutions or orders, or parts thereof, in conflict with the provisions of this Ordinance are to the extent of such conflict hereby repealed.

SECTION 5: Effective Date. This Ordinance shall be in full force and effect from and after its passage, approval, and publication in pamphlet form in the manner provided by law.

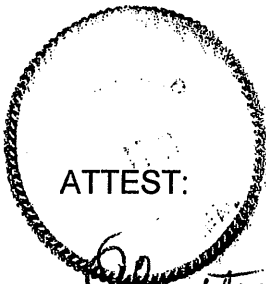
PASSED this 7th day of April 2015.

AYES: Trustees Elder, Angelo, Hughes, LaPlaca, Saigh

NAYS: None

ABSENT: Trustee Haarlow

APPROVED by me this 7th day of April 2015 and attested by the Village Clerk this same day.



Christine M. Bruton
Christine M. Bruton, Village Clerk

Thomas K. Cauley, Jr.
Thomas K. Cauley, Jr., Village President

EXHIBIT A

LEGAL DESCRIPTION

LOT 18 IN BLOCK 30 IN THE SUBDIVISION OF THAT PART OF THE WEST
½ OF THE SOUTHWEST ¼ OF SECTION 8, TOWNSHIP 38 NORTH,
RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING NORTH
OF THE CHICAGO, BURLINGTON AND QUINCY RAILROAD (EXCEPT THE
NORTH 241.55 FEET) IN COOK COUNTY, ILLINOIS

Commonly Known As: 312 Phillippa Street, Hinsdale, Illinois.

PIN: 18-06-308-016-0000

EXHIBIT B

**FINDINGS OF FACT
(ATTACHED)**

FINAL DECISION

VILLAGE OF HINSDALE ZONING BOARD OF APPEALS PETITION FOR VARIATION

Zoning Calendar: V-09-14

Petitioner: Amy Duong Kim

Meeting held: Public Hearing was held on Thursday January 22, 2014 at 6:30 p.m. in Memorial Hall, in the Memorial Building, 19 East Chicago Avenue, Hinsdale, Illinois, pursuant to a notice published in The Hinsdalean on November 27, 2014.

Premises Affected: Subject Property is commonly known as 312 Phillippa Street, Hinsdale, Illinois and is legally described as:

LOT 18 IN BLOCK 3 IN THE SUBDIVISION OF THAT PART OF THE WEST ½ OF THE SOUTHWEST ¼ OF SECTION 6, TOWNSHIP 38 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING NORTH OF THE CHICAGO, BURLINGTON AND QUICNY RAILROAD, (EXCEPT THE NORTH 241.58 FEET) IN COOK COUNTY ILLINOIS

Subject: In this application for variation, the applicant requests relief from the maximum building coverage requirement set forth in section 3-110(F) for the construction of a detached two car garage. The request is for 224 square feet of relief.

Facts: This property is located in the R-4 Residential District in the Village of Hinsdale and is located on the west side of Phillippa Street between Ravine and Hickory. The property has a frontage of approximately 51', a depth of approximately 131.75', and a total square footage of approximately 6,725. The maximum allowable FAR is 2,800 square feet; the maximum allowable building coverage is 25% or approximately 1,681 square feet, and the total allowable lot coverage is 60% or approximately 4,035 square feet.

This request will move on to the Board of Trustees as a recommendation as the Zoning Board of Appeals does not have final authority on this request per 11-503E.

Action of the Board: Members discussed the request and agreed that the standards for variation set forth in 11-503 (F) of the

Hinsdale Zoning Code had been met and recommended approval.

A motion to recommend approval was made by Member Podliska and seconded by Member Moberly.

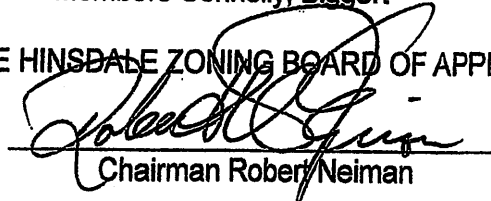
AYES: Members, Moberly, Giltner, Engel, Podliska, and Chairman Neiman

NAYS: None

ABSTAIN: None

ABSENT: Members Connelly, Biggert

THE HINSDALE ZONING BOARD OF APPEALS


Chairman Robert Neiman

Filed this 19th day of February, 2015, with the office of the Building Commissioner.

Zoning Calendar No. V-01-16

VILLAGE OF HINSDALE
APPLICATION FOR VARIATION

COMPLETE APPLICATION CONSISTS OF TEN (10) COPIES
(All materials to be collated)

FILING FEES: RESIDENTIAL VARIATION \$850.00

NAME OF APPLICANT(S): Amy Duong Kim

ADDRESS OF SUBJECT PROPERTY: 312 Phillippa St

TELEPHONE NUMBER(S): 773 295 4387

If Applicant is not property owner, Applicant's relationship to property owner.

DATE OF APPLICATION: _____



RECEIVED
CB 2/9/16

SECTION I

Please complete the following:

1. Owner. Name, address, and telephone number of owner: Amy Duong, as trustee
312 Phillippa St, Hinsdale IL 773 295 4387
2. Trustee Disclosure. In the case of a land trust the name, address, and telephone number of all trustees and beneficiaries of the trust: same
3. Applicant. Name, address, and telephone number of applicant, if different from owner, and applicant's interest in the subject property: same
4. Subject Property. Address and legal description of the subject property: (Use separate sheet for legal description if necessary.) 312 Phillippa
see attached legal.
5. Consultants. Name and address of each professional consultant advising applicant with respect to this application:
 - a. Attorney: Matthew M Klein 322 W Burlington LaGrange IL 708 354 8840
 - b. Engineer: 630 533 3290 Cell mmk131@aol.com
 - c. _____
 - d. _____

6. **Village Personnel.** Name and address of any officer or employee of the Village with an interest in the Owner, the Applicant, or the Subject Property, and the nature and extent of that interest:
- a. none
- b. _____
7. **Neighboring Owners.** Submit with this application a list showing the name and address of each owner of (1) property within 250 lineal feet in all directions from the subject property; and (2) property located on the same frontage or frontages as the front lot line or corner side lot line of the subject property or on a frontage directly opposite any such frontage or on a frontage immediately adjoining or across an alley from any such frontage.
- After the Village has prepared the legal notice, the applicant/agent must mail by certified mail, "return receipt requested" to each property owner/ occupant. The applicant/agent must then fill out, sign, and notarize the "Certification of Proper Notice" form, returning that form and all certified mail receipts to the Village.
8. **Survey.** Submit with this application a recent survey, certified by a registered land surveyor, showing existing lot lines and dimensions, as well as all easements, all public and private rights-of-way, and all streets across and adjacent to the Subject Property.
9. **Existing Zoning.** Submit with this application a description or graphic representation of the existing zoning classification, use, and development of the Subject Property, and the adjacent area for at least 250 feet in all directions from the Subject Property.
10. **Conformity.** Submit with this application a statement concerning the conformity or lack of conformity of the approval being requested to the Village Official Comprehensive Plan and the Official Map. Where the approval being requested does not conform to the Official Comprehensive Plan or the Official Map, the statement should set forth the reasons justifying the approval despite such lack of conformity.
11. **Zoning Standards.** Submit with this application a statement specifically addressing the manner in which it is proposed to satisfy each standard that the Zoning Ordinance establishes as a condition of, or in connection with, the approval being sought.
12. **Successive Application.** In the case of any application being filed less than two years after the denial of an application seeking essentially the same relief, submit with this application a statement as required by Sections 11-501 and 11-601 of the Hinsdale Zoning Code.

SECTION II

When applying for a variation from the provisions of the Zoning Ordinance, you must provide the data and information required above and in addition, the following:

1. Title. Evidence of title or other interest you have in the Subject Project, date of acquisition of such interest and the specific nature of such interest.
2. Ordinance Provision: The specific provisions of the Zoning Ordinance from which a variation is sought:

3-110 (F) Maximum Building Coverage (Previously approved)

3-110 (E) (I) Maximum FAR

10-104 (B) (6) Certain Garages Accessory to Certain Detached Dwellings.

3. Variation Sought: The precise variation being sought, the purpose therefor and the specific feature or features of the proposed use, construction or development that require a variation: (Attach separate sheet if additional space is needed.)

Allow variation in Maximum Building Coverage to allow a two car detached garage.

Allow variation in FAR and Maximize Building Coverage to allow a two-car detached garage.

Allow 10-104 (B) (6) to apply to pre-code homes constructed in 1950 rather than prior to 1950.

4. Minimum Variation. A statement of the minimum variation of the provisions of the Zoning Ordinance that would be necessary to permit the proposed use, construction or development.

The variation is the minimum variation allowing enclosed garage space for two cars.

5. Standard for Variation. A statement of the characteristics of Subject Property that prevent compliance with the provisions of the Zoning Ordinance and the specific facts you believe support the grant of the required variation. In addition to your general explanation, you must specifically address the following requirements for the grant of a variation.

- (a) Unique Physical Condition. The Subject Property is exceptional as compared to other lots subject to the same provision by reason of a unique physical condition, including presence of an existing use, structure of sign, whether conforming or nonconforming; irregular or substandard shape or size; exceptional topographical features; or other extraordinary physical conditions peculiar to and inherent in the Subject Property that amount to more than a mere inconvenience to the owner and that relate to or arise out of the lot rather than the personal situation of the current lot owner.
- (b) Not Self-Created. The aforesaid unique physical condition is not the result of any action or inaction of the owner, or of the owner's predecessors in title and known to the owner prior to acquisition of the Subject Property, and existed at the time of the enactment of the provisions from which a variation is sought or was created by natural forces or was the result of governmental action, other than the adoption of this Code, for which no compensation was paid.
- (c) Denied Substantial Rights. The carrying out of the strict letter of the provision from which a variation is sought would deprive the owner of the Subject Property of substantial rights commonly enjoyed by owners of other lots subject to the same provision.
- (d) Not Merely Special Privilege. The alleged hardship or difficulty is not merely the inability of the owner or occupant to enjoy some special privilege or additional right not available to owners or occupants of other lots subject to the same provision, nor merely an inability to make more money from the use of the subject property; provided, however, that where the standards herein set out exist, the existence of an economic hardship shall not be a prerequisite to the grant of an authorized variation.
- (e) Code and Plan Purposes. The variation would not result in a use or development of the Subject Property that would not be in harmony with the general and specific purposes for which this Code and the provision from which a variation is sought were enacted or the general purpose and intent of the Official Comprehensive Plan.
- (f) Essential Character of the Area. The variation would not result in a use or development of the Subject Property that:
 - (1) Would be materially detrimental to the public welfare or materially injurious to the enjoyment, use development, or value of property of improvements permitted in the vicinity; or
 - (2) Would materially impair an adequate supply of light and air to the properties and improvements in the vicinity; or
 - (3) Would substantially increase congestion in the public streets due to traffic or parking; or

- (4) Would unduly increase the danger of flood or fire; or
- (5) Would unduly tax public utilities and facilities in the area; or
- (6) Would endanger the public health or safety.
- (g) No Other Remedy. There is no means other than the requested variation by which the alleged hardship or difficulty can be avoided or remedied to a degree sufficient to permit a reasonable use of the Subject Project.
(Attach separate sheet if additional space is needed.)

There is no other relief allowing two enclosed garage spaces.

SECTION III

In addition to the data and information required pursuant to any application as herein set forth, every Applicant shall submit such other and additional data, information, or documentation as the Village Manager or any Board of Commission before which its application is pending may deem necessary or appropriate to a full and proper consideration and disposition of the particular application.

1. A copy of preliminary architectural and/or surveyor plans showing the floor plans, exterior elevations, and site plan needs to be submitted with each copy of the zoning petitions for the improvements.
2. The architect or land surveyor needs to provide zoning information concerning the existing zoning; for example, building coverage, distance to property lines, and floor area ratio calculations and data on the plans or supplemental documents for the proposed improvements.

SECTION IV

1. Application Fee and Escrow. Every application must be accompanied by a non-refundable application fee of \$250.00 plus an additional \$600.00 initial escrow amount. The applicant must also pay the costs of the court reporter's transcription fees and legal notices for the variation request. A separate invoice will be sent if these expenses are not covered by the escrow that was paid with the original application fees.
2. Additional Escrow Requests. Should the Village Manager at any time determine that the escrow account established in connection with any application is, or is likely to become, insufficient to pay the actual costs of processing such application, the Village Manager shall inform the Applicant of that fact and demand an additional deposit in an amount deemed by him to be sufficient to cover foreseeable additional costs. Unless and until such additional amount is deposited by the Applicant, the Village Manager may direct that processing of the application shall be suspended or terminated.
3. Establishment of Lien. The owner of the Subject Property, and if different, the Applicant, are jointly and severally liable for the payment of the application fee. By signing the application, the owner has agreed to pay said fee, and to consent to the filing and foreclosure of a lien against the Subject Property for the fee plus costs of collection, if the account is not settled within 30 days after the mailing of a demand for payment.

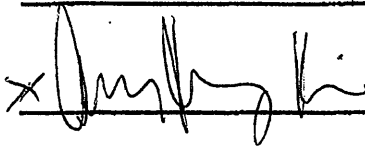
SECTION V

The owner states that he/she consents to the filing of this application and that all information contained herein is true and correct to the best of his/her knowledge.

Name of Owner:

Amy Duong Kim, as trustee

Signature of Owner:



Name of Applicant:

Amy Duong Kim

Signature of Applicant:

Date:

February 9, 2016

Premier Title
1350 W. Northwest Highway
Arlington Heights, IL 60004
A policy issuing agent of
First American Title Insurance Company
27775 Diehl Rd.
Warrenville, IL 60555

SCHEDULE A

File No.: 2014-03039-PT

Policy No.: 5011400-0892244e

Address Reference: 312 Phillippa Street, Hinsdale, IL 60521

Amount of Insurance:

Date of Policy: July 24, 2014

1. Name of Insured:

Amy Hue Duong, as trustee of the Amy Hue Duong Living Trust dated November 8, 2013

2. The estate or interest in the Land that is insured by this policy is:

Fee Simple

3. Title is vested in:

Amy Hue Duong, as trustee of the Amy Hue Duong Living Trust dated November 8, 2013

4. The Land referred to in this policy is described as follows:

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF

Premier Title

BY: 

LEGAL DESCRIPTION

EXHIBIT "A"

File No.: 2014-03039-PT

Policy No.: 5011400-0892244e

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE COUNTY OF COOK, STATE OF ILLINOIS,
AND IS DESCRIBED AS FOLLOWS:

LOT 18 IN BLOCK 3 IN THE SUBDIVISION OF THAT PART OF THE WEST 1/2 OF THE SOUTHWEST 1/4 OF
SECTION 6, TOWNSHIP 38 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN LYING NORTH
OF THE CHICAGO, BURLINGTON AND QUINCY RAILROAD, (EXCEPT THE NORTH 241.56 FEET) IN COOK
COUNTY, ILLINOIS.



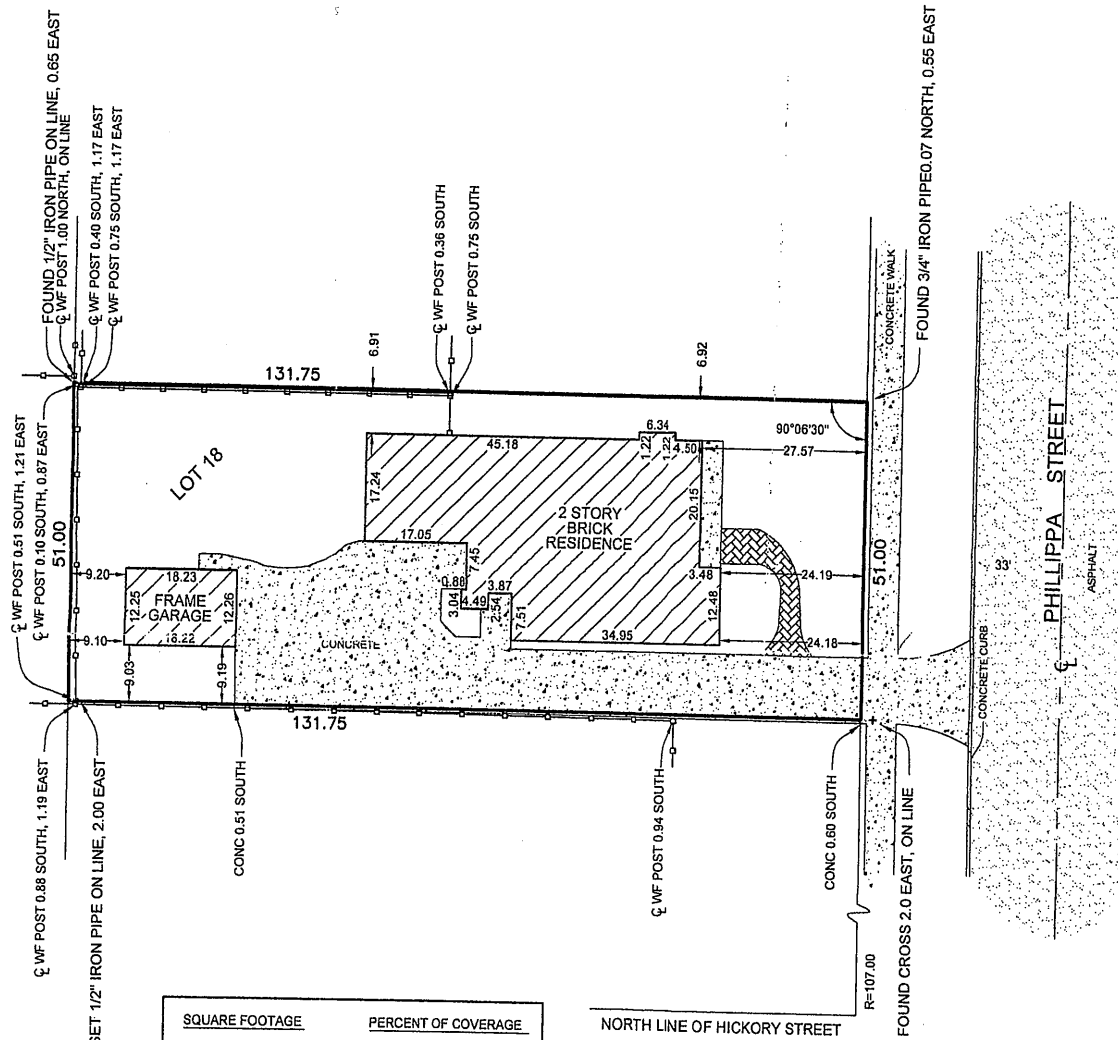
• BOUNDARY • TOPOGRAPHICAL • SUBDIVISIONS • ALTA/ACSM • CONDOMINIUMS • SITE PLANS • CONSTRUCTION • FEMA CERTIFICATES •

SCHOMIG LAND SURVEYORS, LTD. PLAT OF SURVEY

909 EAST 31ST STREET
LA GRANGE PARK, ILLINOIS 60526
SCHOMIG-SURVEY@SBCGLOBAL.NET
WWW.LAND-SURVEY-NOW.COM
PHONE: 708-352-1452
FAX: 708-352-1454

LOT 18 IN BLOCK 3 IN THE SUBDIVISION OF THAT PART OF THE WEST 1/2 OF THE SOUTHWEST 1/4 OF SECTION 6, TOWNSHIP 38 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING NORTH OF THE CHICAGO, BURLINGTON AND QUINCY RAILROAD, (EXCEPT THE NORTH 241.56 FEET) IN COOK COUNTY, ILLINOIS.

COMMON ADDRESS: 312 PHILLIPPA STREET, HINSDALE.



SQUARE FOOTAGE	PERCENT OF COVERAGE
HOUSE (FOOT PRINT) = 1574.4	23.411%
PROPOSED GARAGE = 440	6.543%
DRIVEWAY = 1634.5	24.305%
FRONT PORCH = 70.3	1.045%
BRICK WALK = 117.3	1.744%
TOTAL = 3838.5	57.048%
SQUARE FOOTAGE OF LOT = 6725	

THE CUSTOMER LISTED BELOW PROVIDED THE LEGAL DESCRIPTION SHOWN HEREON. WE DO NOT GUARANTEE THAT THIS IS THE CORRECT LEGAL DESCRIPTION FOR THE TRANSACTION INTENDED.

IMPORTANT: COMPARE LEGAL DESCRIPTION TO DEED OR TITLE POLICY AND REPORT ANY DISCREPANCY FOR CLARIFICATION OR CORRECTION IMMEDIATELY. UNLESS OTHERWISE NOTED, THIS PLAT DOES NOT SHOW BUILDING LINES OR OTHER RESTRICTIONS ESTABLISHED BY LOCAL ORDINANCES.

DO NOT SCALE DIMENSIONS FROM THIS PLAT; THE LOCATION OF SOME FEATURES MAY BE EXAGGERATED FOR CLARITY. NO EXTRAPOLATIONS MAY BE MADE FROM THE INFORMATION SHOWN WITHOUT THE WRITTEN PERMISSION OF SCHOMIG LAND SURVEYORS LTD. ONLY PLATS WITH AN EMBOSSED SEAL ARE OFFICIAL DOCUMENTS. FIELD WORK WAS COMPLETED PER SURVEY DATE LISTED BELOW. © COPYRIGHT, ALL RIGHTS RESERVED.

SURVEY DATE: APRIL 21ST, 2014.

BUILDING LOCATED: APRIL 21ST, 2014.

ADDED SQUARE FOOTAGE: NOVEMBER 25TH, 2014.

ORDERED BY: TODD S. VIDEBECK

PLAT NUMBER: 91CC27 & 140904 SCALE: 1" = 20'

LEGEND

M. = MEASURED DIMENSION
R. = RECORDED DIMENSION
B.L. = BUILDING LINE
P.U.E. = PUBLIC UTILITY EASEMENT
D.E. = DRAINAGE EASEMENT
C. = CENTER LINE
C.L.F. = CHAIN LINK FENCE
W.F. = WOOD FENCE
V.F. = VINYL FENCE
I.F. = IRON FENCE

STATE OF ILLINOIS)
COUNTY OF COOK) ss.

LOT AREA: 6,725 SQUARE FEET.

WE, SCHOMIG LAND SURVEYORS, LTD. AS AN ILLINOIS PROFESSIONAL DESIGN FIRM, LAND SURVEYOR CORPORATION, DO HEREBY CERTIFY THAT WE HAVE SURVEYED THE PROPERTY DESCRIBED HEREON.

ALL DIMENSIONS ARE IN FEET AND DECIMAL PARTS OF A FOOT. DIMENSIONS SHOWN ON BUILDINGS ARE TO THE OUTSIDE OF BUILDINGS. THE BASIS OF BEARINGS, IF SHOWN AND UNLESS OTHERWISE NOTED, ARE ASSUMED AND SHOWN TO INDICATE ANGULAR RELATIONSHIP OF LOT LINES.

THIS PROFESSIONAL SERVICE CONFORMS TO THE CURRENT ILLINOIS MINIMUM STANDARDS FOR A BOUNDARY SURVEY.

BY: *Russell W. Schomig*
PROFESSIONAL ILLINOIS LAND SURVEYOR LICENSE # 035-002446



LICENSE EXPIRATION
11-30-2016

VILLAGE OF HINSDALE, ILLINOIS

THE UNIVERSITY OF CHICAGO

NO. 302

DATE May 10 1954

VILLAGE OF HENSDALE, ILLINOIS		DATE <i>11/11/77</i>		PERMIT NO.
NO. OF FLOORS	SETBACK <i>5-6</i>	INTENSITY OF USE	SINGLE FAMILY RESIDENCE	INDUSTRIAL
FIRE LIMIT <i>30</i>	SIDE YARD <i>6</i>	SECURITY NO. OF FAMILIES	MULTIPLE FAMILY RESIDENCE	PUBLIC
USE ZONE <i>A</i>	REAR YARD <i>2.5</i>	COMMERCIAL		ACCESSORY
APPLICANT FILL IN HEAVILY OUTLINED PORTION ONLY			BUILDING ADDRESS <i>312 76 Phillips</i>	
FEE \$ <i>66.00</i>				

CONTRACTOR	NAME	ADDRESS	CITY	STATE LICENSE NO.	TEL. NO.
	NAME	ADDRESS	CITY	TEL. NO.	
LEGAL DESCRIPTION	LOT NO.	BLOCK	SUB-DIV.		
			COUNTY		

NAME _____
MAIL _____
ADDRESS _____
CITY Hinsdale TEL. NO. 3985

I HEREBY ACKNOWLEDGE THAT I HAVE READ THIS APPLICATION AND
STATE THAT IT IS CORRECT AND AGREE TO COMPLY WITH ALL THE
VILLAGE OF HINSDALE ORDINANCES AND STATE OF ILLINOIS LAWS
REGULATING BUILDING CONSTRUCTION AND USE.

SIGNATURE OF OWNER _____
OR AUTHORIZED AGENT Mary E. Sundstrom

DISTANCE FROM LOT LINES		E 35 W	
N 6	S 10		
DESCRIPTION OF WORK			
NEW	FRAME	BREADTH	32' 6"
ALTERATION	BRICK	LENGTH	34' 6"
ADDITION	STUCCO	HEIGHT	18
REPAIR	CONCRETE	NO. STORIES	1
MOVING	T.P.E.	NO. ROOMS	5
DEMOLITION	WALL COVERING	FLOOR AREA	105
	ROOF COVERING	VOLUME M.C.F.	15.25
THICKNESS OF WALL	FOUNDATION	FOOTINGS	10' x 20' x
	FIRST FLOOR	PIERS	24' x 24' x 1
	SECOND FLOOR	FLOOR JOIST	2' x 10' x 1
	CEILING	CEILING JOIST	2' x 6' x 1
	RAFTERS	RAFTERS	2' x 6' x 1
	STUDS	STUDS	2' x 4' x 1
	FIRE STOP	FIRE STOP	4' x 2'
	CORNER BRACING	CORNER BRACING	
NO. OF STORIES	HALF STORY	FUEL	W.T.
	ROCK WALL		
	VAPOR		
	WIND		
	WIND		
	AIR CONDITIONING		
	VALUATION \$ 100.00		

ROOMS	NO.	SIZE	FLOOR AREA	GRADE AREA	VENTILATION AREA
LIVING	1	14 x 20			
DINING	1	11 x 11			
KITCHEN	1	11 x 8'8"			
BATH	1	6 x 6			
POWDER					
MASTER BEDROOM	1	11 x 15'4"			
OTHER BEDROOM	1	9'6" x 11			
LIBRARY					
SUN ROOM					
RECREATION					
UTILITY					
GARAGE					
BASEMENT	1	32'6" x 34'6"			
STORAGE					
OTHER					
COMMERCIAL					
INDUSTRIAL					
PUBLIC					
RECEIVED					19
ISSUED					19
DENIED					19
FINAL APPROVAL					
DATE					
INSPECTOR					
OVER					