

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION**

400 West Talcott, LLC,)
an Illinois limited liability corporation,)

Plaintiff,)

v.)

City of Park Ridge; Ald. Joseph Sweeney;)
Planning and Zoning Commission; Joseph)
A. Baldi, John Bennett, Louis Arrigoni,)
Crystal Zamaite, John Kosicko, Linda)
Coyle, Jim Argionis, Timothy Kirby and)
Lou Giannetti, Jon Branham, Joe Fresel,)
Krystyna Doerhty, Patricia Gagliardi, Ray)
Wachinick, Frank Wsol, Jerzy Wachnik,)
John Hildebra, Paul Wright, Tom Maheras,)
Christina M., Karen Sloma, Linda Foss,)
Steven Nadler, Larry Devereux, Pat)
Livensparger, Ron Pollina, Missy Langan,)
Tom Harris, Dan Lawlor, Al Beltuzzi and)
Carol McComb, and Unknown Resident,)

Defendants.)

2014CH17457
CALENDAR ROOM 15
17E 03423
Court Review

CASE NO. _____

COMPLAINT FOR ADMINISTRATIVE REVIEW AND OTHER RELIEF

Plaintiff 400 W. Talcott, LLC (“Plaintiff”), by its undersigned counsel, hereby asserts the following as its complaint (“Complaint”) against the defendants, City of Park Ridge, an Illinois Home Rule Municipality, (the “City” or “Park Ridge”), Alderman Joseph Sweeney, the Planning and Zoning Commission for Park Ridge (“Commission”) and its individual members in their official capacities; Joseph A. Baldi, John Bennett, Louis Arrigoni, Crystal Zamaite, John Kosicko, Linda Coyle, Jim Argionis, Timothy Kirby and Lou Giannetti; John Braham, Senior Planner for the City of Park Ridge; and City residents, Joe Fresel, Krystyna Doerhty, Patricia Gagliardi, Ray Wachinick, Frank Wsol, Jerzy Wachnik, John Hildebra, Paul Wright, Tom

Maheras, Karen Sloma, Linda Foss, Steven Nadler, Larry Devereux, Pat Livensparger, Ron Pollina, Christina M., Missy Langan, Tom Harris, Dan Lawlor, Al Beltuzzi and Carol McComb and Unknown Resident (collectively, "Defendants") as follows:

NATURE OF CASE

1. This case arises from the Commission's improper denial of Plaintiff's Site Review Application (the "Application") to construct a multi-family residential/commercial development at 400 West Talcott Road (the "Development").

2. The Development meets all the requirements for approval under the B-1 Zoning District of Park Ridge's Zoning Ordinance as well as the criteria contained in Section 4.5 of the Zoning Ordinance.

3. The Commission's denial of Plaintiff's application adversely affects Plaintiff's legal rights to develop its property in a legal and permitted manner.

4. Because the Commission erred in denying Plaintiff's Application, Plaintiff is entitled to an order (a) reversing and vacating the Commission's decision and (b) instructing the Commission to approve the Application.

PARTIES

5. Plaintiff is an Illinois limited-liability company that is doing business in Illinois. Its principal place of business is at P.O. Box 31606, Chicago, IL 60631.

6. The City of Park Ridge is a home rule municipality located at 505 Butler Place, Park Ridge, 60068, Cook County, Illinois.

7. The Commission is an administrative body of the City. Pursuant to the City's Zoning Ordinance, the Commission is responsible for making final determinations on Site Plan

Applications. Its principal place of business is 505 Butler Place, Park Ridge, 60068, Cook County, Illinois.

8. Joseph Sweeney serves as the First Ward Alderman of Park Ridge and is Council Liaison to the Commission. Upon information and belief he resides in Cook County, Illinois.

9. Joseph A. Baldi is a member of the Commission and serves as the Commission's Chairman. He resides in the State of Illinois. Upon information and belief he resides in Cook County, Illinois.

10. Jim Argionis is a member of the Commission. Upon information and belief he resides in Cook County, Illinois.

11. Louis Arrigoni is a member of the Commission. He also served as Acting Chairman at the September 23, 2014 hearing. Upon information and belief he resides in Cook County, Illinois.

12. John Bennett is a member of the Commission. Upon information and belief he resides in Cook County, Illinois.

13. Linda Coyle is a member of the Commission. Upon information and belief he resides in Cook County, Illinois.

14. Lou Giannetti is a member of the Commission. Upon information and belief he resides in Cook County, Illinois.

15. Timothy Kirkby is a member of the Commission. Upon information and belief he resides in Cook County, Illinois.

16. John Kocisko is a member of the Commission. Upon information and belief he resides in Cook County, Illinois.

17. Crystal Zamaites is a member of the Commission. Upon information and belief she resides in Cook County, Illinois.

18. Jon Branham is a senior planner with Park Ridge and the staff liaison to the Commission. Upon information and belief he resides in Illinois.

19. Al Beltuzzi, is an individual named as a resident who appeared and testified on the record at the September 23, 2014 hearing. Upon information and belief he resides in Cook County, Illinois.

20. Larry Devereux is an individual who resides at 320 Talcott Road, Park Ridge, Illinois and who appeared and testified on the record at the May 27, 2014 hearing.

21. Krystyna Doerhty is an individual who resides at 1223 South Vine Avenue, Park Ridge, Illinois and who appeared testified on the record at the May 27, 2014 hearing.

22. Linda Foss is an individual who resides at 1209 Vine Avenue, Park Ridge, Illinois and who appeared and testified on the record at the May 27, 2014 hearing.

23. Joe Fresel is an individual who resides at 1500 Grove Avenue, Park Ridge, Illinois and who appeared and testified on the record of the May 27, 2014 hearing.

24. Patricia Gagliardi is an individual who resides at 1129 South Vine Avenue, Park Ridge, Illinois and who appeared and testified on the record of the May 27, 2014 hearing.

25. Tom Harris is an individual named as a resident who appeared and testified on the record of the September 23, 2014 hearing. Upon information and belief he resides in Cook County, Illinois.

26. John Hildebra is an individual who resides at 1205 Vine Avenue, Park Ridge, Illinois and who appeared and testified on the record of the May 27, 2014 hearing.

27. Missy Langan is an individual who resides at 1924 Canfield Road, Park Ridge, Illinois and who appeared and testified on the record of the September 23, 2014 hearing.

28. Dan Lowlor is an individual who resides at 322 Talcott Place, Park Ridge, Illinois and who appeared and testified on the record of the September 23, 2014 hearing.

29. Patricia Livensparger is an individual who resides at 413 Courtland Avenue, Park Ridge, Illinois and who appeared and testified on the record of the September 23, 2014 hearing.

30. Tom Maheras is an individual who resides at 316 Talcott Place, Park Ridge, Illinois and who appeared and testified on the record of the May 27, 2014 hearing.

31. Christina M. is an individual named as a resident who appeared and testified on the record of the September 23, 2014 hearing. Upon information and belief she resides in Cook County, Illinois.

32. Carol McComb is an individual named as a resident who appeared and testified on the record of the September 23, 2014 hearing. Upon information and belief she resides in Cook County, Illinois.

33. Steven Nadler is an individual who resides at 300 West Talcott Road, Park Ridge, Illinois and who appeared and testified on the record of the May 27, 2014 hearing.

34. Ron Pollina is an individual who resides at 401 Devon Avenue, Park Ridge, Illinois and who appeared and testified on the record of the September 23, 2014 hearing.

35. Karen Sloma is an individual who resides at 325 Talcott Road, Park Ridge, Illinois and who appeared and testified on the record of the May 27 and September 23, 2014 hearing.

36. Ray Wachinick is an individual who resides at 319 West Talcott Road, Park Ridge, Illinois and who appeared and testified on the record of the May 27, 2014 hearing.

37. Jersey Wachnik is an individual who resides at 319 West Talcott Road, Park Ridge, Illinois and who appeared and testified on the record of the May 27, 2014 hearing.

38. Paul Wright is an individual who resides at 1508 Grove Avenue, Park Ridge, Illinois and who appeared and testified on the record of the May 27, 2014 hearing.

39. Frank Wsol is an individual who resides at 1411 South Grove Avenue, Park Ridge, Illinois and who appeared and testified on the record of the May 27, 2014 hearing.

40. An Unknown Resident named as "Another resident" is an individual who appeared and testified on the record of the September 23, 2014 hearing. Upon information and belief he resides in Cook County, Illinois.

JURISDICTION AND VENUE

41. This Court has jurisdiction of this case under Section 3-104 of the Administrative Review Law, as incorporated by 65 ILCS 5/11-13-13. The statute provides that the Administrative Review Law applies to "[a]ll final administrative decisions of the board of appeals..." 65 ILCS 5/11-13-13. Because the Commission was effectively acting as a zoning board of appeals, the Administrative Review Law applies.

42. Alternatively, this Court has jurisdiction of this case pursuant to common law *certiorari* authority. In the event that the Administrative Review Law does not apply, the decision of the Plan Commission constitutes a final administrative decision, which has no other means of review. As a result, this Court has jurisdiction under common law *certiorari* to review the Commission's decision.

43. This Court has personal jurisdiction over the City, the Commission, its members, and the testifying residents because (a) the City is an Illinois municipality and the Commission is an administrative entity within the City with their principal place of business in Illinois; (b) the

individual defendants reside in Illinois; and (c) the actions taken by the Commission against Plaintiff occurred in Illinois. 735 ILCS 5/2-209(a)(1), (b)(2), (b)(4), (c).

44. This Court is the proper venue because (a) the proceedings that culminated in the Commission's denial of Plaintiff's Application occurred in Cook County, 735 ILCS 5/3-104(1); (b) the hearings on the Application culminating in the denial of the Application occurred in Cook County; (c) the property at issue to be developed is situated in Cook County, 735 ILCS 5/3-104(2); and (d) the filing and denial of Plaintiff's Application, which "gave rise to the proceedings before the [Commission]," occurred in Cook County, 735 ILCS 5/3-104(3).

FACTUAL BACKGROUND

Site Plan Review Procedures under Park Ridge's Zoning Ordinance

45. The City of Park Ridge has a Zoning Ordinance ("Zoning Ordinance"), which has been in effect at all times relevant to the allegations contained in this Complaint.

46. The Zoning Ordinance authorizes the Commission to make final decisions on certain Site Plan Reviews subject to Sec. 4.5 of the Zoning Ordinance. Zoning Ordinance § 2.4(A).

47. Section 4.5 of the Zoning Ordinance establishes certain criteria for the Commission to consider in determining whether to approve or deny a Site Plan Review, including the conformity of the plan with the Zoning Ordinance and Comprehensive Plan, the compatibility of the plan with adjacent properties, and traffic circulation that off-street parking. Zoning Ordinance § 4.5(E).

48. A Site Plan Review is required to be first submitted to the Zoning Administrator. Zoning Ordinance § 4.5(D).

49. The Zoning Administrator determines whether the application is eligible for administrative review. *Id.*

50. If the Zoning Administrator determines that the application is not eligible for administrative review, the application is forwarded to the Commission for approval or denial. *Id.*

51. The Commission has 60 days in which to render a decision on the application. Zoning Ordinance § 4.5(D)(2)(b)(i) and (iii).

52. If, during, or after the submission of an application, the applicant wishes to amend its application, it must submit the amendment to the Zoning Administrator. Zoning Ordinance § 4.5(F)(1).

53. The Zoning Administrator has 5 days to determine whether the amendment constitutes a minor or major change to the original site plan. Zoning Ordinance § 4.5(F)(2).

54. The Zoning Administrator or Commission may determine that a proposed amendment requires the submittal of a revised site plan for proper evaluation. Zoning Ordinance § 4.5(F)(5).

55. Once the application is complete, The Commission must make a decision on the site plan within 60 days. Zoning Ordinance § 4.5(D)(2)(b)(i) and (iii).

56. The Commission must provide its decision in writing with the reason for approval or denial. Zoning Ordinance § 4.5(F)(4)(b).

57. The Zoning Ordinance states that the Commission's "approval or denial of a site plan shall be considered a final administrative decision." There is no process for review or appeal of the Commission's decision under the Zoning Ordinance. Zoning Ordinance § 4.5(D)(2)(b)(iii).

The Commission's Hearing On Talcott's Site Plan Application

58. Plaintiff is a single purpose entity created by John O'Flaherty, the President and owner of Wolf Point Builders, Inc., a real estate developer that has developed properties in Illinois, including Park Ridge, for the last twenty years.

59. On or about February 21, 2014, Plaintiff submitted its Site Plan Review Application ("Application") and conceptual drawings to the City. A copy of the Application is attached as Exhibit 1.

60. The Application is for a four-story, mixed use building consisting of 24 residential units and 1,500 square feet of commercial space on the first floor. Ex. 1.

61. A hearing on the Application was held by the Commission on May 27, 2014. At the hearing, the Commission and certain residents expressed concerns about the size of the building, the residential density, traffic patterns and parking.

62. At the hearing, the Commission asked the Plaintiff whether it would consider making adjustments to the site plan and on that basis continued the hearing to June 24, 2014.

63. On September 12, 2014, Plaintiff submitted an amended site plan ("Amended Application"). A copy of the Amended Site Plan is attached as Exhibit 2.

64. The Amended Application reduced the number of residential units to twenty-two, created additional parking, revised the entry point to the indoor parking area, revised the trash enclosure area, increased the landscaping, and made other architectural changes to the building to reduce massing.

65. On September 23, 2014, the Commission reconvened the hearing on the Amended Application.

66. At the end of the meeting, the Commission voted to deny the Amended Application.

67. On October 16, 2014, the City of Park Ridge informed Plaintiff of the denial and attached the meeting minutes from the May 27, 2014 and September 23, 2014 hearings. A copy of the letter and meeting minutes are attached hereto as Exhibit 3. The meeting minutes reflect each Commissioner and resident's concerns about the Amended Application.

COUNT I

(Administrative Review Under the Administrative Review Act)

68. The Plaintiff incorporates the allegations contained in paragraphs 1-68 as and for its allegations contained in this paragraph as though fully set forth herein.

69. The Zoning Ordinance states that decisions by the Commission on Site Plan Reviews are final administrative decisions.

70. Plaintiff has exhausted its administrative remedies as there is no appeal or review process for decisions of the Commission on Site Plan Reviews contained in either the Zoning Ordinance or the Zoning Enabling Act, 65 ILCS 5/11-13-1 *et seq.*

71. 65 ILCS 5/11-13-13 provides that the Administrative Review Law applies to "[a]ll final administrative decisions of the board of appeals..." 65 ILCS 5/11-13-13.

72. Because the Commission was effectively acting as a zoning board of appeals, the Administrative Review Law applies to the Commission's decision to deny the Plaintiff's Amended Application.

73. The reasons the Commissioners relied upon in denying the Amended Application on September 23, 2014 were:

- (a) The desire for more commercial space in the building;

(b) The building being too large; and

(c) There being too many residential units in the building.

74. The Commission's denial of the Amended Application was clearly erroneous, arbitrary, against the manifest weight of the evidence, and contrary to established law.

75. The development proposed by Plaintiff is located in the B-1 Zoning District.

76. The Amended Application comports with all requirements contained in the B-1 Zoning District.

77. Residential uses are permitted as of right above a commercial use in the B-1 Zoning District.

78. There are no density restrictions for residential dwellings contained in the B-1 Zoning District.

79. There are no requirements in the B-1 Zoning District that mixed-use buildings contain a specified amount of commercial space.

80. The Amended Application otherwise comports with all Site Plan Review Criteria and no other reasons were specifically cited as a basis for denying the Amended Application.

81. As a result, Plaintiff seeks review of the Commission's final order of September 23, 2014 for the reasons set forth above.

82. Plaintiff requests that the Commission (a) file an answer to this complaint and (b) furnish this Court with the entire administrative record in this matter, including any and all documents received, reviewed, analyzed, considered, or created in making the decisions under review.

PRAYER FOR RELIEF

FOR THESE REASONS, either independently or in combination, Plaintiff requests that this Court:

- (a) review the decisions and record of the Commission's administrative proceedings in this matter;
- (b) enter an order (i) reversing and vacating the Commission's denial of Plaintiff's Amended Application and (ii) instructing the Commission to approve the Amended Application; and
- (c) grant any other relief that the Court deems just and proper.

COUNT II

(Administrative Review Under Common Law Writ of *Certiorari* – in the alternative)

83. The Plaintiff incorporates the allegations contained in paragraphs 1-68 as and for its allegations contained in this paragraph as though fully set forth herein.

84. The Zoning Ordinance states that decisions by the Commission on Site Plan Reviews are final administrative decisions.

85. Plaintiff has exhausted its administrative remedies as there is no appeal or review process for decisions of the Commission on Site Plan Reviews contained in either the Zoning Ordinance or the Zoning Enabling Act, 65 ILCS 5/11-13-1 *et seq.*

86. 65 ILCS 5/11-13-13 provides that the Administrative Review Law applies only to “[a]ll final administrative decisions of the board of appeals...” 65 ILCS 5/11-13-13.

87. Because the Commission is not the zoning board of appeals, there is no statutory procedure to review the decision of the Commission.

88. As a result, the decision may be reviewed under common law principles of *certiorari*.

89. The reasons the Commissioners relied upon in denying the Amended Application on September 23, 2014 were:

(d) The desire for more commercial space in the building;

(e) The building being too large; and

(f) There being too many residential units in the building.

90. The Commission's denial of the Amended Application was clearly erroneous, arbitrary, against the manifest weight of the evidence, and contrary to established law.

91. The development proposed by Plaintiff is located in the B-1 Zoning District.

92. The Amended Application comports with all requirements contained in the B-1 Zoning District.

93. Residential uses are permitted as of right above a commercial use in the B-1 Zoning District.

94. There are no density restrictions for residential dwellings contained in the B-1 Zoning District.

95. There are no requirements in the B-1 Zoning District that mixed-use buildings contain a specified amount of commercial space.

96. The Amended Application otherwise comports with all Site Plan Review Criteria and no other reasons were specifically cited as a basis for denying the Amended Application.

97. As a result, Plaintiff seeks review of the Commission's final order of September 23, 2014 for the reasons set forth above.

98. Plaintiff requests that the Commission (a) file an answer to this complaint and (b) furnish this Court with the entire administrative record in this matter, including any and all

documents received, reviewed, analyzed, considered, or created in making the decisions under review.

PRAYER FOR RELIEF

FOR THESE REASONS, either independently or in combination, Plaintiff requests that this Court:

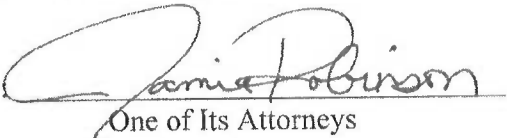
- (a) review the decisions and record of the Commission's administrative proceedings in this matter;
- (b) enter an order (i) reversing and vacating the Commission's denial of Plaintiff's Amended Site Application and (ii) instructing the Commission to approve the Amended Site Application; and
- (c) grant any other relief that the Court deems just and proper.

Dated: October 28, 2014

Respectfully submitted,

400 W. TALCOTT, LLC

By


One of Its Attorneys

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