

**IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT  
WHEATON, DU PAGE COUNTY, ILLINOIS**

**VILLAGE OF WOODRIDGE**, a municipal corporation,

Plaintiff,

v.

**BOARD OF EDUCATION OF COMMUNITY  
HIGH SCHOOL DISTRICT 99**, a body politic and corporate, **COUNTY BOARD OF SCHOOL TRUSTEES OF DU PAGE COUNTY, ILLINOIS**, a body politic and corporate, for the use and benefit of School District Number 99, Du Page County, Illinois and **UNKNOWN OWNERS**,

Defendants.

No. 05 ED 64

**MOTION *IN LIMINE* TO BAR  
EVIDENCE OF AN ALLEGED VILLAGE GOAL OR POLICY  
AGAINST MULTI-FAMILY HOUSING**

Defendant Community High School District 99 (the “High School District”), by DLA Piper US LLP, its attorneys, moves *in limine* to bar evidence and testimony purporting to demonstrate a goal or policy on the part of the Village of Woodridge that seeks to prohibit the addition, and to encourage the reduction, of multi-family residential uses within the Village. Such evidence and testimony is not admissible because (a) there is no evidence that the Village Board has ever adopted such a goal or policy, (b) any such goal or policy would be irrelevant, because no witness in this case relies on multi-family as the highest and best use of the subject property, and (c) the law does not recognize attempts to forecast municipal zoning activities. In support of the motion, the High School District states:

The Village has designated several witnesses to testify as to the highest and best use and the value of the Property, including land planner Allen L. Kracower, and appraisers Roger Tibble and Joseph Thouvenell. Each of these witnesses bases his opinion in part on a goal or policy

purportedly enforced by the Village seeking to prohibit the addition of, and to encourage the reduction of, multiple-family residential uses within the Village. As evidence of such policy or goal, each witness has produced (1) an Interoffice Memorandum dated May 2, 2002, prepared by Staci R. Hulseberg, Director of Planning and Development, which includes as an attachment a summary of several developments within the Village (the “Interoffice Memorandum”), a copy of which is attached as Exhibit A; and (2) a slide presentation titled “Plan Commission Workshop – Reduction of Multi-Family Housing” dated May 20, 2002 (the “Plan Commission Presentation”), a copy of which is attached as Exhibit B. None of the Village witnesses cited any evidence that the Village Board has ever considered or acted on either the Interoffice Memorandum or the Plan Commission Presentation.

**Village Goals or Policies May Only be Set by Formal Act of the Corporate Authorities**

Illinois courts recognize a number of factors as relevant to the reasonable probability of rezoning analysis in the context of valuation, including the rezoning of nearby property, growth patterns, change of use patterns and character of the neighborhood, demand within the area for certain types of land uses, sales of related or similar properties at prices reflecting anticipated rezoning, physical characteristics of the subject property and of nearby properties and the age of the zoning ordinance. Lombard Park District v. Chicago Title & Trust Co., 103 Ill. App. 2d 1, 242 N.E.2d 440, 444 (2nd Dist. 1968); *see also* Dept. of Transportation v. Western Nat’l Bank of Cicero, 63 Ill.2d 179, 347 N.E.2d 161, 185 (1976). With respect to comprehensive plans and municipal ordinances, the law is well-settled that, unless they are ambiguous on their face, such legislative pronouncements should be interpreted without considering other aids. Oak Brook Park District v. Oak Brook Development Co., 170 Ill. App. 3d 221, 524 N.E.2d 213, 218 (2nd Dist. 1988) (“A zoning ordinance is a legislative act and courts lack the power to inquire into the

wisdom of the ordinance or motives which prompted its enactment . . .”). In refusing to admit minutes purporting to evidence the board of trustee’s motives in approving a particular rezoning, Oak Brook noted that courts should look to outside sources only where the statutory language is ambiguous. *Id.*; see also Illinois State Toll Highway Authority v. Heritage Standard Bank & Trust Co., 250 Ill. App. 3d 665, 619 N.E.2d 1321, 1330-1331 (2nd Dist. 1993) (upholding admission of zoning board minutes as necessary to resolve an “apparent conflict” between the comprehensive plan and the zoning ordinance.”).

In this case, neither the Village nor the High School District has suggested that this Court requires additional assistance in interpreting the goals and policies set forth in the Village’s comprehensive plan and zoning ordinance. It is these official documents, adopted by formal action of the corporate authorities, which set the goals and policies of the Village, not some staff memorandum or presentation.<sup>1</sup> Even if the Court were to look beyond the text of the zoning ordinance and comprehensive plan, looking to the Interoffice Memorandum and the Plan Commission Presentation would be misleading, because they do not demonstrate the actual motives of the members of the Village Board. Instead, these documents merely state the positions of staff.

Accordingly, it is not proper to consider the Interoffice Memorandum or the Plan Commission Presentation, and this Court should enter an order barring admission of or reference to these documents.

**Multi-Family is Not an Issue in this Case**

Neither the Interoffice Memorandum nor the Plan Commission Presentation are relevant to this case because neither the Village nor the High School District, nor any of their witnesses,

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<sup>1</sup> It is notable that the Village’s witnesses seek to rely on the Plan Commission Presentation, not on any official action of the Plan Commission or the Village Board undertaken after the Plan Commission viewed the Plan Commission Presentation.

rely on multi-family housing as the highest and best use of the subject property. The Village witnesses contend that single-family detached housing is the highest and best use. The High School District's witnesses suggest a slightly more dense mix of single family attached and detached housing. Neither use is multi-family, as reflected in the Village's own zoning ordinance.

The Village's zoning ordinance clearly distinguishes between multi-family residential uses and single-family *attached* uses – both in definition and treatment. The Village's Zoning Ordinance defines “Dwelling, single-family attached” as:

A residential building designed and built as a dwelling unit for one family, but which may touch another single-family dwelling on one or more sides, with or without party walls, but which is located as the only dwelling unit on a single specific lot or parcel of ground.

Section 9-2-2 of the Zoning Ordinance of the Village of Woodridge (1976 Code §22-1-1). The Village's Zoning Ordinance separately defines a “Dwelling, multiple-family” as:

A residential building designed and built as a group of individual dwelling units, each for a single family, but which units may touch each other by virtue of common or party walls and/or floors and ceilings, and which contain two (2) or more dwelling units.

*Id.* Additionally, the Village's zoning districts segregate single-family attached housing and multi-family housing. Although multi-family housing and single-family attached housing are both permitted in the Village's A-1 Residential District, only multi-family housing is permitted in the A-2 Residential District. Sections 9-5D-1 and 9-5E-1 of the Zoning Ordinance of the Village of Woodridge (1976 Code §22-1-1). Single-family attached housing is not. Copies of the relevant portions of the Village's zoning ordinance are attached as Exhibit C.

Accordingly, a Village goal or policy to prohibit or reduce multi-family housing is a red herring in this case. This Court should enter an order barring any reference thereto.

**Evidence to Prognosticate Village Action is Inadmissible**

Although evidence of the “flexibility” of a zoning ordinance is admissible to demonstrate the reasonable probability of rezoning, Illinois courts do not permit evidence purporting to reveal a legislature’s motivations in granting or denying particular applications or how those motivations may affect the reasonable probability of rezoning. Oak Brook Development Co., 170 Ill. App. 3d 221, 524 N.E.2d 213. The court in Oak Brook Development Co. rejected such evidence as an attempt to demonstrate what the board of trustees might do on a particular application for rezoning by the defendants in the case. *Id.* at 231-232. Absent some conflict on the face of the municipality’s ordinances themselves, such evidence is not admissible. *See Heritage*, 250 Ill. App. 3d 665, 619 N.E.2d 1321. For example, the court in Heritage held that minutes of the local zoning board were admissible to demonstrate whether the board considered the condemning body’s proposed improvement in granting a particular approval, where there was an “apparent conflict” between the underlying zoning documents and the documents were unclear on their face as to this issue. 619 N.E.2d at 1330. However, even under those circumstances, an opinion as to the “mental processes” of the board members themselves was not admissible. *Id.*

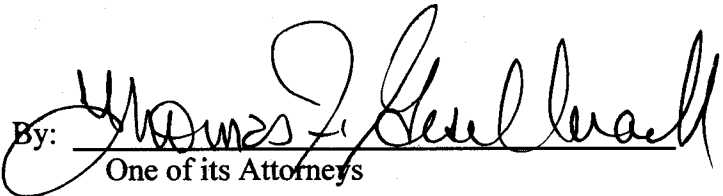
In this case, not even the Village has alleged any conflict between the Village’s zoning ordinance and its planning documents. The Interoffice Memorandum and the Plan Commission Presentation reflect, at best, the motivations and positions of particular Village staff members as to multi-family housing. Any imputation of these motivations and positions to the Village Board of Trustees, its Zoning Board or Plan Commission, or even to the individual members of those bodies, would be without any basis in fact.

The Interoffice Memorandum and the Plan Commission Presentation constitute a “prognostication” of what the Village Board might do on a particular application for rezoning. Such evidence is not recognized by Illinois courts. Lombard Park District, 103 Ill. App. 2d 1, 242 N.E.2d 440, 444; *see* Department of Public Works v. Rogers, 78 Ill. App. 2d 141, 223 N.E.2d 177 (2nd Dist. 1966), *affirmed* 39 Ill.2d 109, 233 N.E.2d 409 (1968); *see also* Park District of Highland Park v. Becker, 60 Ill. App. 2d 463, 208 N.E.2d 621 (2nd Dist. 1965).

**WHEREFORE**, defendant Community High School District 99 respectfully requests the Court to bar any evidence or testimony purporting to demonstrate a goal or policy on the part of the Village of Woodridge seeking to prohibit the addition, and to encourage the reduction, of multiple-family residential uses within the Village.

**COMMUNITY HIGH SCHOOL DISTRICT 99**

Date: February 15, 2008

By:   
One of its Attorneys

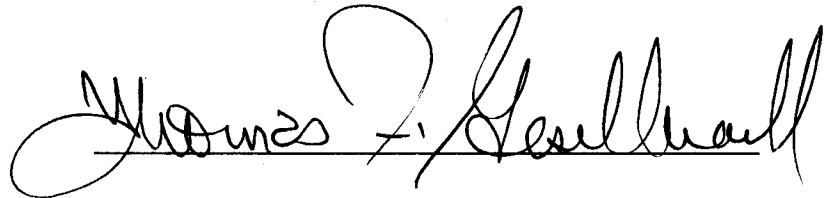
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**CERTIFICATE OF SERVICE**

I, Thomas F. Geselbracht, an attorney, hereby certify that I caused the foregoing  
MOTION *IN LIMINE* TO BAR EVIDENCE OF AN ALLEGED VILLAGE GOAL OR  
POLICY AGAINST MULTI-FAMILY HOUSING, to be served upon:

Phillip A. Luetkehans  
Robert W. Funk  
Schrott & Luetkehans, P.C.  
105 East Irving Park Road  
Itasca, Illinois 60143

by e-mail delivery to [rfunk@sl-atty.com](mailto:rfunk@sl-atty.com) and by depositing true and correct copies so addressed  
in the United States postal drop located at 203 North LaSalle Street, Chicago, Illinois, before  
5:00 p.m., this 15th day of February, 2008, with proper postage prepaid.

A handwritten signature in black ink, reading "Thomas F. Geselbracht", written over a horizontal line. The signature is cursive and includes a large loop at the beginning.