

October 19, 2007

Zoning Board of Appeals
City of Aurora
1 South Broadway
Aurora, Illinois 60507

**RE: Notice of Amendment of Appeal in the matter of Gemini/Planned
Parenthood facility at 3051 E New York St**

Ladies and Gentlemen:

By this letter the undersigned hereby amend their appeal to the Zoning Board of Appeals ("the Board") on behalf of the parties listed below ("Appellants").

Respectfully, Appellants renew their request that the Zoning Board of Appeals review and reverse the orders, requirements, decisions and determinations reached below, and in the proper exercise of the powers reposed in said body by the laws of the State of Illinois and the ordinances of the City of Aurora, restore and uphold the rule of law in the City of Aurora. At stake is nothing less than whether the provisions of the AZO apply equally to all Aurora's citizens or whether the AZO's requirements may be dispensed with at the behest of special interests.

I. Current state of the appeal

Appellants call the attention of the Board of Appeals to the fact that additional aggrieved persons have been added to the group of appellants in this matter.

The Rules and Regulations of the Board of Appeals state that "Upon receipt of the properly filed appeal application form, the Secretary to the Board shall assign a case number and place it on the calendar of the Board for hearing within sixty (60) days." The appeal was filed in this case almost three weeks ago, and appellants have not been assigned a case number or given a date for hearing. In open session of the Board last Wednesday, counsel for appellants was told that the appeal was properly filed but that it has been referred to the Law Department. The word, "shall", indicates a mandatory command by the law. However, the appellants in this action have not even been accorded the courtesy of a case number, much less a hearing date.

The Rules and Regulations also state that "(e) The Zoning Administrator shall make all papers constituting the records upon which the action appealed from (sic) was taken a matter of public record." Moreover, 65 ILCS 511 1 - 13 - 12 commands the Zoning Administrator to "forthwith transmit to the board all the papers constituting the record upon which the action appealed from was taken." On Wednesday, the Board of Appeals confirmed that Ms. Weingartz was the appropriate party to contact regarding this matter.

Multiple demands for these papers have been made to Ms. Weingartz, with silence as the only reply.

The external attorney reports in this matter were returned to the city three weeks ago. No other documents have been presented to the public to justify the city's action in this matter. Moreover, the Zoning Administrator has still never publicly stated or explained his position on this matter. Unless the city is waiting to see what points the appellants raise and then *ex post facto* construct a paper trail against these points, the Administrator's papers should have been available immediately upon the filing of this appeal.

There have been internal city reviews and three external attorney reviews, along with many FOIA requests from the public—unless these reviews and requests were undertaken and answered with less than complete information, the papers are available. We are almost 20 days into the 60 days required for a hearing on this appeal. Without the required papers, appellants—who are citizens and taxpayers of Aurora—watch as their right to present an effective appeal are frittered away. For this reason, until otherwise notified, appellants assume that the Leutkehans Report provides the operative grounds for the decision of the city that all applications for permits and all permits are valid. The Martens Report is relevant for factual background, but the scope of Mr. Martens review, by his own admission, was heavily restricted. The Martens Report was also filed well prior to the discovery of pertinent information regarding the connection between Planned Parenthood and Gemini.

Finally, according to the Rules and Regulations, "Filing of the appeal application form with the Zoning Administrator and the Board shall stay all proceedings in furtherance of the action appealed from". Appellants requested that this stay be enforced almost three weeks ago. In reply, they have received silence and inaction from their government.

II. The 1973 Plan Description and 1993 Plan Description Modification define the current zoning regulation of the subject property

Based on documents that have come to the attention of the appellants, the correct zoning for this property is a Planned Development District, as ruled by the terms of the Plan Description, enacted in 1973 by Aurora City Council Ordinance 4330, and the Plan Description Modification, enacted in 1993 by Aurora City Council Ordinance O93-124. Barring some additional ordinances not released to the public by the City of Aurora, the Plan Description, as amended by the Modification, govern the subject property today. As purchasers of a \$1 million property and constructors of a \$7.5 million facility, Gemini/Planned Parenthood knew or should have known that these documents applied to their property and facility.

III. The zoning permitted uses and standards that should be applied to the property are those of a "Business Boulevard" District

At page 5, the Modification states that "Only the uses that are permitted uses on December 7, 1993 or which subsequently become permitted uses in a B-B Business Boulevard District of the Zoning Ordinance shall be permitted uses in the Business Areas

of the Region to which this Modification applies, e.g. those Business Areas of the Region which have not yet been Final Planned and Final Platted." The subject property is within those Business Areas and was not Final Planned and Final Platted at the time the Modification was adopted in 1993.

At page 8, the Modification states that "1. The standards applicable from time to time to lands in B-B Business Boulevard Districts shall apply in such "Business Areas" of the Region".

IV. The Planned Parenthood use is not a permitted use under the 1973 Plan Description and the 1993 Modification

Prior to public disclosure of the use of the subject property, Planned Parenthood applied to the Illinois Finance Authority for \$8.05 million in 501(c)(3) bonds, whose proceeds may only be used in furtherance of a 501(c)(3) charitable organization purpose. Attachment 7 of their Application for the bonds, Planned Parenthood noted that they intended to build a "full service center....This new site will give us an opportunity to truly become a *regional* presence".

This "full service center" would be a center that provides medical care; "serve[s] as a voice in the community...and engage[s] the public in dialogue that will further the rights of women;" and "expand[s] our community education presence in the suburbs for teen, parents, and clergy."

According to the Aurora Zoning Ordinance, "8.6-4.1. Permitted Uses: The use of land or buildings in the B-B district shall be limited to the following:...LLL. Offices, business and professional, including medical clinics."

As noted in appellants' Notice of Appeal, the Aurora Zoning Ordinance has always recognized that "Social service agencies, charitable organizations, health related facilities, and similar uses when not operated for pecuniary profit" is a separate use category from "Offices, business and professional, including medical clinics". The arguments made in appellants' Notice of Appeal are even stronger now: in a B-B district, the not for pecuniary profit use category is not even included in the "special use" category—it is not a permitted use category at all.

Considering that two of Planned Parenthood's major uses for the facility do not involve the provisioning of medical care, this "regional" facility fits well in any one or more than one of "social service agencies", "charitable organizations", "health related facilities", "and similar uses when not operated for pecuniary profit". Planned Parenthood cannot hide from who it is: it is registered as an "Illinois Not-for-Profit Corporation". It is registered as a "charitable organization" under federal law. It engages in political advocacy, community organizing, and public outreach and education, along with its provisioning of health care.

V. Gemini/Planned Parenthood's deception frustrated legitimate city action to protect the public, unrelated to abortion rights

Page 1 of the Leutkehans Report states,

Given the fact that the building contained bullet-proof glass and walls in the entryway, the Planned Parenthood emails I have received and the ties between Gemini and Planned Parenthood, it is my opinion that the facility was always intended to be utilized to terminate pregnancies....there can be no doubt that the intended user for the development was always Planned Parenthood.

Planned Parenthood confirmed that it was the driving force behind this facility in its filings in federal court:

“13. In 2002, PPCA began planning for a new medical facility to provide services in Chicago's western suburbs. The nearest PPCA facility is in downtown Chicago, more than 35 miles away. Ultimately, PPCA obtained a parcel of land at 3051 E. New York Street in Aurora and designed a \$7.5 million, 22,000 square foot outpatient medical office facility for that site (the "Facility").” Verified Complaint of Planned Parenthood Chicago Area and Gemini Office Development, filed September 13, 2007, United States District Court for the Northern District of Illinois.

As has been discussed, multiple false permit applications were filed for the property and facility at issue by Gemini/Planned Parenthood, and the legally authorized representative of Gemini lied to an alderman in an open hearing, in response to a legitimate direct question.

The argument that has been forwarded by Leutkehans and Gemini/Planned Parenthood is not that there was no deceit but that the deceit was not "material". The Leutkehans report cites Illinois case law to define "material misrepresentation": "A misrepresentation is material if it would be likely to affect the conduct of a reasonable man with reference to the transaction in question." Leutkehans also cites case law to hold that "The authority to deny an occupancy permit based upon a material misrepresentation is inherent in the governing body."

Where Leutkehans went awry was in citing the *Oak Grove Jubilee Center* case, where a pastor—without intent to lie or deceive—filed a special use permit application for his church. There was never any doubt that he was a pastor filing for the use of a property as a church. The pastor was an active local pastor and never lied, deceived, or obfuscated that he was the pastor of a particular church.

The Leutkehans Report acknowledges that tenant information is legitimate for a government to request, but he misunderstands why it is legitimate and important. As shown in this particular case, the name of the tenant is important because it indicates the true use of a property. It is the city's responsibility and authority to evaluate the true use versus the use categories set up in the Zoning Ordinance. Lying in response to legitimate requests by the city undermine this responsibility and authority. Leutkehans, however, apparently didn't even know that Alderman Elmore was lied to at the November 16, 2006

Planning & Development Committee Meeting as he never referred to this fact in his report.

Particularly, here are some of the city's rights that were trampled by Gemini/Planned Parenthood's deceit: 1) the right to make an accurate determination of the use of a property; 2) the right to raise and address supposed ambiguities in city ordinances, as applied to the use of a property; 3) the right to demand clarification of a use and to restrict a property to permitted uses; 4) the right to alter final plans to protect legitimate public interests; 5) the right to declare legitimate special uses, to declare legitimate special use approval procedures, and to have those procedures followed; and 6) the right to do all of these things in accord with all city ordinances, in front of the legally specified committees and commissions, and prior to issuing any permits or allowing any improvement to a property.

The discussion of appropriate use category should have been had prior to the first brick being laid for this facility. Gemini/Planned Parenthood's deception prevented this discussion, and they must bear the responsibility for their misdeeds.

A. Specific actions that could have been taken by the city in response to learning that a regional Planned Parenthood presence was the true use, without impacting abortion rights

In the normal building construction process of the City of Aurora, many different individuals and committees have a chance to impact the design and presentation of the facility seeking to be built, without restricting the actual permitted use of the building. Leaving behind the issue of whether or not the use in this matter falls into a permitted use category, the deception of Gemini/Planned Parenthood prevented the city from exercising its legitimate authority to protect the public. To get a sample of some of the city's legitimate purposes and interests in zoning, one can look to Aurora Zoning Ordinance, Section 2.1. "Intent and Purpose." Just in this one section, there are a host of legitimate government purposes frustrated through Gemini/Planned Parenthood's deceit.

Had Gemini/Planned Parenthood answered honestly and forthrightly to the city's legitimate requests, the city could have asked for modifications from the proposed plan. For instance, knowing that the country's largest abortion facility would generate significant public presence, along with foot and vehicle traffic—from supporters and opponents—the city could have requested that the building be sited differently, that the building have a separate driveway from the already heavily-trafficked Dominick's shopping center, that more extensive landscape and other screening be provided, along with many other plan modifications.

Moreover, any argument that modifications should not have been made in this instance contradict the lived experience of the city and people of Aurora. Thousands of people have protested the facility, media trucks and police cars have been there regularly, foot traffic has increased significantly, vehicle traffic has increased significantly, press

conferences are had by both sides at the site, multiple acts of violence against protestors have already occurred, and a host of other issues have surrounded this facility.

Gemini/Planned Parenthood itself knew about the potential for problems. It used bullet-proof glass and drywall in the entranceway. In an open letter in the Aurora Beacon News on September 6, 2007, the CEO of Planned Parenthood Chicago Area stated that "Anti-abortion activists with a history of advocating illegal and sometimes violent behavior are trying to...stop this health center from opening." Knowing there had been a history of violence at their facilities, Planned Parenthood made sure to protect their facility and their staff with bulletproof glass.

This elicits the question, who is supposed to protect everyone else?

The answer is, the City of Aurora.

Here are a few activities that either are known, are claimed, or reasonably could be concluded may occur at Planned Parenthood facilities and/or large suburban abortion facilities:

- Picketing on public sidewalks
- Sidewalk counseling pre-abortion
- Sidewalk counseling post-abortion
- Pamphleteering of vehicles and persons in or near the facility entering shopping center
- Large graphic signs showing aborted babies
- Jericho marches around a facility
- Shots fired at the physical facility
- Shots fired at protestors
- Shots fired at clients
- Shots fired at staff
- Stray shots entering residential or shopping areas
- Bombings at facility leading to damage of facility, along with shrapnel harming protestors, clients, staff, and those in surrounding residential or shopping areas
- Increased police complaints and police reports
- Assault & Battery on protestors
- Assault & Battery on clients
- Assault & Battery on staff
- Heavy foot traffic by protestors and gawkers
- Large numbers of abortion clients arriving over very short periods of time
- Noise generated by protestors and counterprotestors, day and night
- Round-the-clock prayer and candlelight vigils
- Community outreach meetings for or against the facility bringing large numbers of people at unpredictable times
- Media trucks regularly on site for press conferences at the new headquarters for Planned Parenthood and for press conferences against the facility
- Increased foot traffic for and against the facility from those who will walk to the facility or arrive via public transportation

Here are a few plan modifications the city might have requested of the facility, without restricting the right of the facility to perform abortions:

- That a private sidewalk be built leading down to the Dominick's
- That a private sidewalk be built leading to front door of facility
- That a private sidewalk be built at the rear of the facility
- That these sidewalks be public right-of-ways
- Increased landscape shielding from light and visual disturbance for homes that back up to the facility
- Bullet shielding or blast shielding to protect residences in area and shoppers
- Noise shielding for homes near facility
- Change in entrance locations, parking lot configuration, and siting of facility on lot to protect public, to facilitate safety of those exercising their First Amendment rights of expression and protest, to facilitate the offering of alternatives to abortion information, to facilitate the offering of after-abortion recovery information

However, because of Gemini/Planned Parenthood's fraud, the city was prevented from protecting its citizens. Leutkehans recounted Illinois law as saying that "A misrepresentation is material if it would be likely to affect the conduct of a reasonable man with reference to the transaction in question." In this transaction, reasonable city officials would have at least considered modifications to the plans of Gemini/Planned Parenthood. Reasonable city officials would have made a careful evaluation of which use category the Planned Parenthood use fit into. Obviously, if city officials had decided that the use was not allowed, they would have required variance or special use proceedings.

The action of the City of Aurora on October 1, as reported at the press conference, supports this contention. After investigating the use that Planned Parenthood was intending, the city required Planned Parenthood to sign a letter limiting their use of the facility. What the city's action says is that, if not for the misrepresentation of Gemini/Planned Parenthood, the "reasonable" city official would have required a signed statement limiting the use—prior to the laying of the first brick. The city's action is another ground that proves materiality.¹

Since Gemini/Planned Parenthood's deception was material and a fraud on the city, appellants renew their request for the Board of Appeals to deny all applications for permits, revoke all permits, and declare all actions pendent to such permits to be null and void.

VI. The facility appears to have been designed and built in violation of the standards of the 1973 Plan Description, the 1993 Modification, and the Aurora Zoning Ordinance

¹ The city's action may not have fully remedied the issue of "major surgery"—one definition of which is a surgery performed under general anesthesia. According to Planned Parenthood Chicago Area's website, they perform some abortions under general anesthesia. Without attacking the Leutkehans Report's antediluvian abortion jurisprudence, that Report did not address such a condition. This would have been yet another consideration for a "reasonable" city official— prior to the laying of the first brick..

As noted above, according to the 1993 Modification, the "standards applicable from time to time to lands in B-B Business Boulevard Districts shall apply" to the subject property.

A. The plans for this property and facility and the facility as-built do not appear to meet the standards of a B-B district

Below are a few examples of difficulties with the subject property and facility:

First, according to Zoning Ordinance Section 8.6-5.1.B.i.,

a. There shall be a front yard having a depth of not less than thirty-five (35) feet.

...

c. No parking or loading shall be permitted in the front yard.

Based on the plans made public in this matter, the parking lot of the facility appears to violate this setback requirement.

Second, according to Zoning Ordinance Section 8.6-5.1.G.,

ii. An off-street parking space shall be a usable area of not less than one hundred ninety (190) square feet no less than ten (10) feet wide by nineteen (19) feet long.... Backup space shall not be less than...twenty-five (25) feet in width when serving automobiles parked perpendicular to the aisles.

Based on the plans made public in this matter, the parking lot spaces appear to violate both the width requirement for the individual space and the backup space requirement.

Third, according to Zoning Ordinance Section 8.6-5.2.E.,

ix. For medical or dental clinics--Six (6) parking spaces per doctor engaged at clinic.

...

xvi. For banks, business or professional offices or public administration buildings--One (1) parking space for each three hundred (300) square feet of floor area.

According to the Final Plan of Gemini/Planned Parenthood, the number of required parking spaces was calculated as follows: "No. of Parking Spaces Required by Ordinance: Professional Offices $21750 / 400 = 54$, 4 Doctors w/3 Employees Each = 16".

However, according to 8.6-5.2.E., the number of parking spaces would properly be calculated as follows:

Professional Offices:	$21750 / 300 = 72$
4 Doctors:	$4 \times 6 = 24$
Total	96 Required Parking Spots

If appellants are correct on these points, both the plans for this property and facility and the currently as-built property and facility require multiple variances. Appellants are unaware of any variances requested by Gemini/Planned Parenthood.

B. The plans were improperly submitted and approved according to the 1993 Modification and the Aurora Zoning Ordinance

Page 15 of the 1993 Modification, V.3., states that

Preliminary Plans shall be submitted for approval prior to December 7, 2000.
Final Plans for all portions of the Region shall be submitted for approval prior to December 7, 2003.

While timing for plan submission may usually be extended by approval of the City Council, appellants know of no such action. Moreover, Preliminary Plans in a Planned Development District generally require approval of the City Council. Appellants know of no Preliminary Plans filed in this matter, and without City Council approval, the submitted plans are null and void. If a Preliminary Plan was submitted, and the Final Plan includes major changes from that Preliminary Plan, a public hearing is mandated under Section 10.7-12.2 of the AZO. The Plan Description, Modification, and Zoning Ordinance require that Final Plans be submitted within a period of time after a Preliminary Plan in order to be valid—or that the Final Plan be submitted to meet both Preliminary and Final Plan requirements. Appellants know of no such action.

Moreover, appellants do not know if the Final Plan was compared to the Land Use Plan or Development Plan of the area, as required by the 1973 Plan Description. If the clear requirements of the 1973 Plan Description and the 1993 Modification were not followed, Gemini/Planned Parenthood has only itself to blame.

Based on all of these factors, the Board of Appeals is requested to declare the Final Plan null and void and to declare any actions pursuant to the approval of such Final Plans null and void.

VII. Conclusion

The rule of law obtains in the City of Aurora, as elsewhere. Laws must be followed. They cannot be thrust aside when inconvenient or at odds with political expediency. Here, the Appellants were clearly deprived of their rights to notice and hearing and are being harmed by the construction and use of this facility. Respectfully, the Appellants renew their request that the Zoning Board of Appeals provide relief in this matter. The Zoning Administrator and other Aurora officials who were involved in this flawed process must be held to enforce the law.

Respectfully submitted,

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