

**BEFORE THE ZONING BOARD OF APPEALS
AURORA, ILLINOIS**

Kim Frachey, Nancy Maloney,)	
<i>et al.</i> , and Fox Valley Families)	
Against Planned Parenthood,)	
)	
Appellants,)	
)	07 ZBA 001
vs.)	
)	
City of Aurora,)	
A Municipal Corporation,)	
)	
Appellee.)	

**APPELLANTS' MOTION TO COMPLETE THE RECORD AS REQUIRED BY
65 ILCS 5/11-13-12 AND THE RULES AND REGULATIONS OF THE AURORA
ZONING BOARD OF APPEALS**

Now come Kim Frachey, Nancy Maloney, Socorro Nieto, Chad and Natalie Fiolo, and Fox Valley Families Against Planned Parenthood (hereinafter “Appellants”), by their undersigned counsel, and move that the City of Aurora be required, pursuant to law as set forth below, to complete the record herein. In support whereof, Appellants state the following:

Requirements of Law

1. Under 65 ILCS 5/11-13-12, the Zoning Administrator is to "forthwith transmit to the board all the papers constituting the record upon which the action appealed from was taken." Moreover, under Section (e) of the Rules and Regulations of the Aurora Zoning Board of Appeals, "The Zoning Administrator shall make all papers constituting the records upon which the action appealed from (sic) was taken a matter of public record."

Inadequacy of Record

2. Forty-five days after the filing of the present appeal and after numerous requests—and almost three months after the commencement of the City's own review of the zoning process in this matter—the City has transmitted to the Zoning Board of Appeals an incomplete record as set forth below.
3. Indeed, the Corporation Counsel, Ms. Weingartz, wrote to Appellants’ Counsel (see attached letter) Thanksgiving Eve promising to deliver and telefax two critical documents—Final Plans and the “staff report” on which the zoning for the property was based—but that day came and went and said documents were neither delivered nor telefaxed. Further, when Appellants’ Counsel went to review records at City

offices, he was told by the City employees that they were under strict orders not to provide him with copies of any documents.

Request for Relief

4. In particular, Appellants request that the following records be made part of the official record in this matter and, then, that the City affirm that it has produced a complete and total response to these requested records in compliance with 65 ILCS 5/11-13-12 and Section (e) of the Rules and Regulations of the Aurora Zoning Board of Appeals:
 - A. All reports mentioned and publications alleged and cited in the City's Motion to Dismiss, along with all related notes, plans, surveys, applications, and all other records as the basis by which the reports were prepared, including but not limited to the "staff report dated October 27, 2006," and the publication alleged "to the Planning Commission at a public meeting on November 1, 2006, and to the Planning and Development Committee at a public meeting on November 16, 2006."
 - B. All records related to the property located at 3051 E. New York St., Aurora, IL ("the property") in connection to the submission and approval of plans, submission and approval of permits, and improvement of the property—including but not limited to petition and permit applications with all attachments, permits issued, petitions, plans, drawings, surveys, corrections reports, correspondence issued by the City, notes made by inspectors and staff, along with any record submitted to the City by N.Y. Oakhurst, LLC; Thomas Lehman; David Dastur; Kristos Tsogas; Theresa Huyck; Gemini Office Development, LLC; Gemini Office Management, LLC; Planned Parenthood/Chicago Area; or anyone acting on any behalf of any of these individuals and entities.

In particular, none of the issued construction-related permits—the actual documents which purportedly authorized the improvement of the property—have been made of record. Moreover, while three temporary certificates of occupancy were provided in the record, a fourth—the certificate under whose authority Planned Parenthood is currently operating—was inexplicably withheld. Also, the Final Plan, Site Plans, A.T.L.A. Survey, and other plans by which the decision to permit the property was made, are not of record. The resubmittal/corrections reports and other intermediate or final reports sent to the applicants by the City are also not of record.

- C. All records relating to the approval by the City of the Preliminary Plan for the property. No records have been provided related to this necessary approval.
- D. All records relating to the determination of the appropriate zoning for the property—including but not limited to reports, all correspondence between the City and the applicant or anyone acting for the applicant, meeting details and notes, phone logs, and emails.

- In particular, Mr. Lehman and Mr. Dastur apparently filed a Design Services Team application, No. 06-0012, for the property on January 5, 2006, but no record of this transaction or any follow-up has been released by the City. Including the claimed "staff report dated October 27, 2006," at least three different reports appear to have been prepared by the Planning Division regarding the zoning of the property—none are of record. Part of the Land Use Petition application is of record, but the "Qualifying Statement of Petition"—a required submission with the Land Use Petition application that describes in detail the impact of the proposed use on the neighborhood—is not of record. Part of the alarm permit application is of record, but the required emergency contact submission—apparently the first public document acknowledging Planned Parenthood's ownership of the property—received August 20, 2007, is not of record.
- E. The reports of the outside counsels hired by the City to review the process, along with all records cited or reviewed by the outside counsels—whether provided by the City or the applicant or anyone acting on behalf of the applicant—in their reviews, as the final zoning decision announced by Mayor Weisner at his press conference on October 1, 2007, imposing a new condition on Planned Parenthood's right to occupy the property was premised on those reports. The Leutkehans report concludes that Planned Parenthood was the intended user of the property from February 2007 onward based on "a review of the emails I received from Planned Parenthood's attorney," but these emails are not of record. The Leutkehans and Martens reports both cite proceedings before the Illinois Finance Authority featuring Theresa Huyck, who serves as both President of Gemini Office Development and Chief Operating Officer of Planned Parenthood / Chicago Area, but these proceedings are not of record. Leutkehans further cites the emails and "opinion letters from attorneys for Planned Parenthood" to support his conclusion that "the intended use for the development was always Planned Parenthood." These and all other records reviewed by the attorneys should be made part of the record.
- F. All statements released or made by City officials in reference to the property, as these statements indicate the mindset of the City throughout the permitting process, in ordering the outside attorney review, and in imposing the new condition on Planned Parenthood's right to occupy, including but not limited to the City press release issued October 1, 2007, at the conclusion of the attorney review; the prepared statement of Ms. Alayne Weingartz read at the City Council meeting on October 9, 2007; the statements made by the City in the Autumn 2007 *Aurora borealis*; and any statements from City Spokeswoman, Ms. Carrie Ergo, to the media or public on this matter.
- G. And any other documents pertinent or related to the claims made by the Appellants in this appeal proceeding.

5. Without these items in the official record, the Board will be unable to make a fully informed decision in this matter, as mandated by 65 ILCS 5/11-13-12. That the administrative record be as complete as possible is especially important where, as here, it is both clear and conceded that the zoning and permit process was tainted by misrepresentation.

WHEREFORE, the Appellant Objectors respectfully request that this Board grant them the requested relief and order the City to complete the record and for all other relief warranted on the premises in accordance with the law.

On behalf of the Appellants,
Peter C. Breen

Thomas Brejcha

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November 28, 2007



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Date:	November 21, 2007	Pages:	<u>2</u> Including cover sheet
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Subject:	
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Comments:



City of Aurora

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Re: Frachey, et al. Appeal to Zoning Board of Appeals No. 07 ZBA 001

Pursuant to a telephonic request from Mr. Peter Breen, I have reviewed the record, and did find that the Final Plan document, as well as the Zoning Administrator's Staff Report, mentioned in my Motion, were not included in the record.

Monday, November 26, 2007, those copies will be delivered to me, and I will distribute to you via Fax on that day.

Sincerely,

Alayne M. Weingartz
Corporation Counsel