

**IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT
DUPAGE COUNTY, ILLINOIS**

MEGAN CLIFFORD and PETER CLIFFORD,)
JESSICA COMMO,)
JASON FULLER, KIMBERLY A. HESS and)
NANCY HESS, PETER KIENLEN and)
RACHELLE KIENLEN, ANDREW)
LIVINGSTON and LELAND LIVINGSTON,)
DIANA MARTINEZ, KRISTIN MASSA)
and RICHARD MASSA, MARK SIMON, and)
MONTESSORI ACADEMY OF GLEN ELLYN,)
INC., an Illinois corporation,)

Plaintiffs,)

vs.)

TRUE NORTH ENERGY, LLC,)
Delaware limited liability company, and)
the VILLAGE OF GLEN ELLYN, a)
home rule municipal corporation,)

Defendants.)

No. 2017-CH-000780

Hon. Bonnie Wheaton



PLAINTIFFS' AMENDED BILL OF PARTICULARS

NOW COME Plaintiffs MEGAN CLIFFORD and PETER CLIFFORD, JESSICA COMMO, JASON FULLER, KIMBERLY A. HESS and NANCY HESS, PETER KIENLEN and RACHELLE KIENLEN, ANDREW LIVINGSTON and LELAND LIVINGSTON, DIANA MARTINEZ, KRISTIN MASSA and RICHARD MASSA, MARK SIMON, and MONTESSORI ACADEMY OF GLEN ELLYN, INC., by and through their undersigned attorneys, and pursuant to 735 ILCS 5/2-607 provide this Amended Bill of Particulars as follows:

1. As to Paragraph 3 of Plaintiffs' Second Amended Complaint, state in detail what further conditions were allegedly added to the Special Use Permit.

RESPONSE: On February 23, 2017, the Glen Ellyn Plan Commission held a public hearing with discussion, consideration, and recommendation regarding a request for approval of a Special Use Permit for the property at 825 North Main Street to allow the construction of a gas station and convenience store.

At that hearing, the Plan Commission, by a unanimous vote of 8-0, recommended to deny the Application for Special Use Permit request due to findings by the Plan Commission that the Application and related materials were incomplete, along with the following findings of fact:

- i. The proposed use will not be harmonious and in accordance with the general objectives or within a specific objective of the Comprehensive Plan and/or Zoning Code because the Gas Station as proposed in terms of size and volume does not fit the character of the residential and commercial locale of the corner.
- ii. The proposed project is not designed and maintained so as to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity and will change the essential character of the area because there is, as currently planned, the lack of a significant buffer between the developed property and the neighborhood and residents that border the property.
- iii. The proposed use will be hazardous or disturbing to existing or future neighborhood uses of the property because of a. the proposed lighting and b. the absence of facts in the application with respect to hours of operation and how the property is going to be operated and managed.

The Plan Commission did not consider the variance requests based on the unanimous recommendation to deny the Application for Special Use. *There were no subsequent Plan Commission public hearings regarding the Special Use Permit.*

On March 13, 2017, the Village Board heard presentations from Planning and Development Director Hulseberg and representatives from True North regarding the proposed development of 825 North Main Street. At that meeting, the Village Board hastily passed Ordinance No. 6486 granting approval of a Special Use Permit and variations from the Sign Code for the construction of a gas station and convenience store project at 825 N. Main St. *See Agenda, Agenda Packet, Minutes, and Media from the March 13, 2017 meeting.*

In fact, in an email from Village Manager Franz to the Village Board on March 10, 2017, Manager Franz indicated that the Village Board will be asked to vote on the Special Use on March 13, 2017 and that “*If the Special Use is denied, then the project does not move forward* [emphasis added].”

Subsequent to the February 23, 2017 Plan Commission public hearing but prior to the March 13, 2017 Village Board meeting, the Application for Special Use, originally stamped January 27, 2017, was amended on March 6, 2017, along with the submission of several new documents and updated plans as identified below, and attached to Ordinance No. 6486, *none of which were reviewed or considered by the Plan Commission or afforded testimony, public comment or cross-examination.* These new documents consisted of:

- i. Petitioner’s Findings of Fact, stamped received *March 6, 2017*
- ii. Site Plan prepared by Ambrose Design Group (Sheet SP-1) stamped received *March 3, 2017*
- iii. Landscape Plan prepared by Ives/Ryan Group, Inc. (Sheets L-1 and L-2) stamped received *March 3, 2017*
- iv. Tree Preservation Plan prepared by Ives/Ryan Group, Inc. (Sheet TP-1) stamped received *March 3, 2017*
- v. Building Elevations prepared by F.A. Ross Architecture (Sheets A-400 and A-401) stamped received *March 3, 2017*
- vi. Canopy Elevation prepared by Ambrose Design Group (Sheet C-1) stamped received *March 3, 2017*
- vii. Floor Plan prepared by F.A. Ross Architect (Sheet A-200) stamped received *March 3, 2017*
- viii. Sign Plan prepared by Ambrose Design Group (Sheet FS-1) stamped received *March 3, 2017*
- ix. Color Renderings of convenience store and gas canopy (8 pages) stamped received *March 3, 2017*
- x. Photometric Analysis prepared by Red Leonard Associates (RLA 1 of 5) stamped received *March 3, 2017*
- xi. Light Pole Spacing Plan prepared by Ambrose Design Group (LP-1) stamped received *March 3, 2017*
- xii. Drainage Sketch prepared by Northwestern Engineering Consultants, P.C. (2 pages) stamped received *March 3, 2017*
- xiii. Material Listing (2 pages) stamped received *March 3, 2017*

Village residents continued to plead to the Village Board and staff for the opportunity for their right to testify and cross-examine witnesses given the new information. During open public comment at the March 13, 2017 Village Board meeting, a resident asked a procedural question on whether there is sworn testimony and cross-examination of the *new* facts presented. Village President Demos responded “not at the Village meeting.” (*See* video timestamp 2:03:18 from the March 13, 2017 meeting.) At the April 19, 2017 Plan Commission public hearing to consider variance requests, residents were told “that the Plan Commission is not considering a Special Use Permit to operate a gas station which was previously discussed and a recommendation was made for a Special Use Permit by the Plan Commission which the Village Board did approve.” *See* Agenda, Agenda Packet, and Minutes from the April 19, 2017 Plan Commission public hearing.

On April 24, 2017, the Village Board heard presentations from Planning and Development Director Hulseberg and representatives from True North regarding the proposed development of 825 North Main Street. At that meeting, the Village Board passed Ordinance No. 6498 granting approval for certain variations from the Zoning Code in connection with the project, several which in fact, are more accurately denoted as additional conditions placed upon the previously approved Special Use Permit. *See* Agenda, Agenda Packet, Minutes, and Media from the April 24, 2017 meeting.

During that meeting, five (5) variances were requested by True North. An additional nine (9) conditions were proposed by Village staff that had been agreed to by True North prior to the meeting. An additional two (2) conditions were presented at the meeting that had not been pre-approved by True North. Ultimately, ten (10) of the eleven proposed conditions were approved by the Village Board and added to the final Ordinance No. 6498 (denoted as Conditions B through K in Section Three of Ordinance No. 6498, dated April 24, 2017).

In addition to the variances and conditions noted above, there were two (2) new conditions discussed during the meeting and ultimately added to Ordinance No. 6498 (denoted as Conditions L and M in Section Three of Ordinance No. 6498, dated April 24, 2017). While the ten (10) conditions noted above arguably could be considered more appropriate for the use, the last two Conditions L and M accurately denote restrictions placed on the previously approved Special Use Permit, and can be tied back to the original discussion on the proposed Special Use at the February 23, 2017 Plan Commission meeting, including but not limited to hours of operation and additional buffer landscaping. Specifically:

- i. The gas station and convenience store will be closed between midnight and 5:00 a.m. seven days a week. The gas station canopy lights will be turned off during the hours the business is closed.
- ii. The petitioner will grant a 5-year temporary access easement to the Village to allow the Village access onto the property to plant additional buffer landscaping at the Village's discretion. The petitioner shall be responsible to maintain the landscaping installed by the Village.

On May 1, 2017, the Village Board purportedly held a "public hearing" to consider an "Ordinance Finalizing the Sale of the Property at 825 N. Main St. and Authorizing Staff to Proceed and Set a Closing Date," identified as Ordinance No. 6500. Before opening the public hearing, Village Attorney Matthews stated that "it won't be in the sense of a cross-examination like the zoning rules under the State require." (*See* video timestamp 44:45 from the May 1, 2017 meeting.) The Village Board passed Ordinance No. 6500 which purportedly was merely intended to finalize the sale of the property and set a closing date but which, in fact, resulted in even more conditions being placed upon the previously approved Special Use Permit. *See* Agenda, Agenda Packet, Minutes, and Media from the May 1, 2017 meeting.

Specifically, during the May 1, 2017 public hearing, Village Manager Franz and Village Attorney Matthews clarified two conditions on the restriction on hours of operation and the access

easement that would be established for additional plantings. The May 1, 2017 discussion was purportedly to “clean up” final details on the project, as indicated by Village Attorney Matthews.

During that May 1, 2017 discussion, two (2) new conditions were discussed and placed on the previously approved Special Use Permit: (See Media 2:49.)

- i. True North’s gasoline tankers will not travel on Main Street, Glen Ellyn, south of the subject property to access the site. All gasoline tankers serving the subject property shall come from the north of the site.
- ii. The petitioner will amend the final landscape plan to add additional evergreen trees, minimum 8-feet in height, at the south east corner of the proposed detention to form a continuous screening hedge along the south and east property lines. This final landscape plan shall be subject to staff review and approval.

The above two conditions appear to have been added to Ordinance No. 6498 (denoted as Conditions P and Q - noting Conditions N and O are duplicates) in Section Three of Ordinance No. 6498 (dated April 24, 2017) after the fact, despite little to no discussion on these topics at the April 24, 2017 Village Board Meeting (An Ordinance Granting Approval of Variations from the Glen Ellyn Zoning Code and Exterior Appearance For the Construction of a Gas Station and Convenience Store for True North Energy, LLC to be Located at 825 North Main Street, Glen Ellyn, Illinois 60137) as opposed to the May 1, 2017 Special Meeting regarding Ordinance No. 6500 (An Ordinance of the Village of Glen Ellyn Finalizing the sale of the Property at 825 N. Main St. and Authorizing Staff to Proceed and Set a Closing Date). Somehow, Conditions P and Q, which were discussed on May 1, 2017, ended up in Ordinance No. 6498, which was approved, and executed on April 24, 2017.

In total, four (4) conditions were added to Ordinance No. 6498 that appropriately resemble conditions placed on the previously approved Special Use Permit. It is preposterous to assume that, given the nature of these conditions, they would be associated with anything but the proposed use of the property. In fact, these four (4) conditions are in direct conflict with, or attempt to

modify, the Village's own Findings of Fact relating to the request for a Special Use Permit noted in the Recitals of Ordinance No. 6486 (An Ordinance Granting Approval of A Special Use Permit for a Service Station and Variations from the Glen Ellyn Sign Code For the Construction of a Gas Station and Convenience Store for True North LLC to be Located at 825 North Main Street, Glen Ellyn, Illinois 60137). Specifically, the additional conditions conflict with, at a minimum, the Village's own Findings of Fact in Items 3, 5, 7, and 9. The Village somehow arrived at these Findings, despite a single Plan Commission hearing on February 23, 2017 during which the Plan Commission noted incomplete information and unanimously recommended to deny the Special Use Permit, in addition to new information that was submitted to Village staff just prior to Village Board meeting on March 13, 2017, none of which was reviewed or considered by the Plan Commission or afforded testimony, public comment or cross-examination.

2. As to Paragraph 3 of Plaintiffs' Second Amended Complaint, state the specific date(s) when further conditions were allegedly added to the Special Use Permit.

RESPONSE: See Response to No. 1 above. Specifically, April 24, 2017 and May 1, 2017.

3. As to Paragraph 3 of Plaintiffs' Second Amended Complaint, state in detail the process by which further conditions were allegedly added to the Special Use Permit.

RESPONSE: See Response to No. 1 above.

4. As to Paragraph 3 of Plaintiffs' Second Amended Complaint, state specifically who allegedly added further conditions to the Special Use Permit.

RESPONSE: See Response to No. 1 above.

5. As to Paragraph 3 of Plaintiffs' Second Amended Complaint, state specifically what document in which these alleged further conditions can be found.

RESPONSE: See Response to No. 1 above.

6. As to Paragraph 57 of Plaintiffs' Second Amended Complaint, state in detail the specific studies that were allegedly required to be submitted as part of True North's Application.

RESPONSE: Section 10-10-14(B) of the Glen Ellyn Zoning Code requires an applicant for a Special Use Permit to provide, among other things, a narrative statement evaluating the economic effects on adjoining properties, the effect of such elements as noise, glare, odor, fumes and vibration on adjoining property, a discussion of the general compatibility with the adjacent and other properties in the district, the effect of traffic, and the relationship of the proposed use to the comprehensive plan, including an explanation of how the project fulfills the requirements of subsection (E), which in turn sets forth specific criteria which must all be met by the applicant in order for a Special Use Permit to be granted.

In the instant case, True North failed to present sufficient evidence, whether in the form of studies or otherwise, to meet its burden. *See* Paragraphs 58-64 of the Second Amended Complaint; deficiencies identified by the Planning Commission at its February 27, 2017 meeting; and deficiencies identified by Trustees Senak and Kenwood during the March 13, 2017, April 24, 2017 and May 1, 2017 Village Board meetings.

7. As to Paragraph 57 of Plaintiffs' Second Amended Complaint, state in detail the source of the requirements of any studies which were allegedly required to be submitted as part of True North's Application.

RESPONSE: *See* Response to No. 6 above.

8. As to Paragraph 57 of Plaintiffs' Second Amended Complaint, state in detail the requirements of any studies which were allegedly required to be submitted as part of True North's Application.

RESPONSE: *See* Response to No. 6 above.

9. As to Paragraph 91 of Plaintiffs' Second Amended Complaint, state in detail what written information was allegedly absent from True North's Application.

RESPONSE: See Response to No. 6 above.

10. As to Paragraph 93 of Plaintiffs' Second Amended Complaint, state in detail what conditions were allegedly eventually placed on the Special Use Permit.

RESPONSE: See Response to No. 1 above.

11. As to Paragraph 93 of Plaintiffs' Second Amended Complaint, state the specific date(s) when such conditions were allegedly eventually placed on the Special Use Permit.

RESPONSE: See Response to No. 1 above.

12. As to Paragraph 112 of Plaintiffs' Second Amended Complaint, state in detail the alleged lack of adequate notice regarding the neighboring Plaintiffs.

RESPONSE: See generally Response to No. 1 above. At both the April 24, 2017 and May 1, 2017 meetings, the Village Board placed additional conditions on the previously approved Special Use Permit, and did so without identifying those additional conditions on the Agendas and without providing notice by publication to the community at large nor direct notice to residents within 250 feet of the project. Without identifying the consideration of additional conditions on the agenda, the Village's action approving same is contrary to requirements of the Illinois Open Meetings Act.

On February 22, 2016, The Village Board passed Ordinance No. 6386, authorizing the sale of the Property to True North. As evidenced through a Freedom of Information Act Request requesting all public notices, registered mail dates, and mailing addresses covered by public notices for 825 N. Main Street, there was no public notice regarding the sale of the Property, and

in fact the sale was conveniently placed on the Village Board's "consent agenda" for the February 22, 2016 Board Meeting, indicating there wasn't even a discussion or debate.

Further, on May, 1, 2017, the Village Board held a Special Meeting, which purported to include a public hearing to consider an Ordinance Finalizing the Sale of the Property at 825 N. Main St. and Authorizing Staff to Proceed and Set a Closing Date. (*See* May 1, 2017 Agenda.) However, there was no public notice, as evidenced by the lack of same in the Village's response to plaintiffs' Freedom of Information Act Request requesting all public notices, registered mail dates, and mailing addresses covered by public notices for 825 N. Main Street.

Respectfully Submitted,

MEGAN CLIFFORD and PETER CLIFFORD,
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KIENLEN and RACHELLE KIENLEN, ANDREW
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DIANA MARTINEZ, KRISTIN MASSA and
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MONTESSORI ACADEMY OF GLEN ELLYN,
INC.

By: s/ David L. Hartsell

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CERTIFICATE OF SERVICE

I, David L. Hartsell, an attorney, hereby certify that on April 6, 2018, I caused a copy of **NOTICE OF FILING** and **PLAINTIFFS' AMENDED BILL OF PARTICULARS** to be served upon the following counsel of record via email:

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