

On October 12, 2004, the Second District Appellate Court ruled that Judge Bonnie Wheaton properly entered judgment in favor of Robert Klaeren, Carle Wunderlich and Frieda and Izaak Chernobrov regarding the substance of their claim that procedural deficiencies in the zoning process invalidated the approval of an annexation and zoning for a Meijer superstore in Lisle. The Second District also affirmed Judge Wheaton's ruling that Meijer was not required to pay the attorneys' fees and expert expenses in the litigation.

The dispute began with a July 9, 1998 public hearing in Lisle where then-Mayor Ronal Ghilardi chaired the hearing and imposed rules to which hundreds objected. These rules led to a denial of cross-examination and an unreasonable time limit on participation according to Judge Wheaton and the Second District. Mark Daniel and John Zemenak of the Wheaton, Illinois firm of Rathje & Woodward filed the first pleading in the lawsuit on February 11, 1999 and obtained injunctive relief September and October 1999. Meijer appealed the injunction as high as the Illinois Supreme Court but failed to convince the court of their position. The resulting opinion was noted by the Second District as causing a "sea of change" in zoning law in Illinois. The case returned to Judge Wheaton and she eventually entered an order leading to judgment for Robert Klaeren, Carle Wunderlich and Frieda and Izaak Chernobrov on May 25, 2003. The ruling invalidated all of the decisions of the Village Board based upon the flaw in the aspect of the hearing process involving proposed special uses and a planned unit development. Judge Wheaton also denied any recovery of attorneys fees.

Oral argument on the appeal to the Second District proceeded on September 14, 2004 before Justices O'Malley, Bowman and Callum. The unanimous October 12, 2004 opinion affirmed Judge Wheaton in all respects. On appeal, Meijer argued that the decision in the Supreme Court was a new rule that should be applied prospectively only and not to the parties in the case or anyone prior to them. Meijer also argued that the approvals were severable--meaning that the special use and PUD invalidity would not affect anything else. The agreement and all ordinances contained a severability clause. The appellate court rejected Meijer's positions and noted that Lisle failed to run a proper joint hearing when it chose not to address matters distinctly. Further, the appellate court found that Judge Wheaton correctly disregarded the severability clauses and found that none of the approvals were valid. Finally, the appellate court rejected a cross-appeal concerning the payment of the plaintiffs' legal fees.

The 60-acre property proposed for development is located at the intersection of Maple Avenue and Benedictine Parkway in Lisle. Rathje & Woodward handled development approvals for the Green Trails subdivision located nearby the proposed Meijer and has represented the objectors—accumulating a substantial legal bill. The legal fees and fees for experts, coupled with the costs of the lawsuit, exceeded \$200,000.00. The plaintiffs benefited heavily from unprecedented community-wide support that they received from thousands of Lisle residents—from donations and protests to volunteering in one aspect or another.

Meijer and the plaintiffs now have the opportunity to ask the Illinois Supreme Court to review the case or seek rehearing before the Second District. Mark Daniel stated: “The decision of the Second District answers questions for those in the municipal and land development community that doubted some aspects of the first Klaeren decisions on appeal. It supports those developers and municipalities that have taken the extra step to promote a hearing that results in the most appropriate outcome for the municipality, the developer and the residents.” He had little to say regarding the dispute concerning attorneys fees but noted that the support from the clients and the residents in Lisle has been and will continue to be appreciated. “I have seen only one circumstance where good people formulated such an organized effort to express their views and seek redress in the courts and through the elective process. There will be others in the future, but residents of Lisle certainly have something to be very proud of as a result of the appellate court’s decision.”

John Zemenak noted that Meijer’s options were limited but that decision relied heavily upon the December 12, 2002 ruling of the Illinois Supreme Court in the first appeal. “Meijer followed through with its investment and it will have to decide whether to continue the appeal, dispose of the property or proceed through the annexation and zoning process at the Village.” Notably, there were two elections following the Meijer approvals in 1999. Each election resulted in a significant change in the Village Board that would eventually need to review any future applications by Meijer. In 2005, [state the offices that are subject to election].

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