IN THE 21ST JUDICIAL CIRCUIT COURT
KANKAKEE COUNTY, ILLINOIS

CONCERNED CITIZENS OF MANTENO, PLAINTIFFS,)
VS.)
VILLAGE OF MANTENO & GOTION, INC.)
DEFENDANTS.)

No. 2023 CH 37

FILED
MAY 14 2025
Sandra M Cleary
CIRCUIT COURT CLERK

MEMORANDUM OF DECISION

Defendant Gotion filed a 735 ILCS 5/2-615 Motion to Dismiss Counts I and IV of the 2nd Amended Complaint for failure to state a claim under Illinois Municipal Code 65 ILCS 5/11-13-15, a 735 ILCS 5/2-619 Motion to Dismiss Counts I and IV of the 2nd Amended Complaint because the claims are not ripe and fail to exhaust administrative remedies, a 735 ILCS 5/2-615 Motion to Strike allegations regarding national security from the 2nd Amended Complaint, a Motoi to adopt the Village's Motion to Dismiss Counts VII, VIII, IX, and X of the 2nd Amended Complaint.

Defendant Village filed a combined 735 ILCS 5/2-603(a) Motion to Dismiss (clear and concise pleadings) and 735 ILCS 5/2-615(a) Motion to Dismiss Counts VII, VIII, IX, and X of the 2nd Amended Complaint.

Counts II and V (Prospective Public Nuisance) and Count III and IV (Prospective Private Nuisance) of the 2nd Amended Complaint stand because there are no Motions to Dismiss these Counts.

The court considered the pleadings, briefs, oral arguments, the Illinois Code of Civil Procedure, and relevant Illinois law, cases, and precedent.

- **LEGAL STANDARD**
  - **2-615**

A section 2-615 motion to dismiss challenges the legal sufficiency of a complaint based upon defects apparent on the face of the complaint. 735 ILCS 5/2-615; *Heastie v. Roberts*, 226 Ill. 2d 515, 517 (2007). In ruling on a section 2-615 motion, a court must accept as true all well-pleaded facts and all reasonable inferences that may be drawn from those facts. *Heastie*, at 531. The crucial inquiry in ruling upon a section 2-615 motion to dismiss is whether the allegations of the complaint, when considered in a light most favorable to the plaintiff, are sufficient to state a cause of action upon which relief can be granted. *Board of Directors of Bloomfield Club Recreation Ass'n v. The Hoffman Group*, Inc., 186 Ill. 2d 419, 424 (1999).

A cause of action should not be dismissed pursuant to section 2-615 unless it is clearly apparent the plaintiff cannot prove any set of facts entitling plaintiff to recovery. *Heastie*, 531. *Dawson v. City of Geneseo*, 2018 IL App (3d) 170625. *Green v. Rogers*, 234 Ill. 2d 478, 491 (2009). *Weidner v. Karlin*, 402 Ill. App. 3d 1084 (3rd Dist. 2010). In a ruling on a 2-615 Motion to Dismiss, a court may not rely on facts outside the complaint. *Visvardis v. Ferleger*, 375 Ill. App. 3d 719, 724 (1st Dist. 2007).

A section 2–615 motion to dismiss attacks the legal sufficiency of a complaint based on defects apparent on its face. *Pooh–Bah Enterprises v. County of Cook*, 232 Ill. 2d 463, 473 (2009). The court considers only facts apparent from the face of the pleadings, matters which the court can take judicial notice, and judicial admissions in the record. Mere conclusions of law or facts unsupported by specific factual allegations in a complaint are insufficient to withstand a section 2–615 motion to dismiss. *Phoenix Ins. Co. v. Rosen*, 242 Ill. 2d 48, 54 (2011). Even when the court accepts all well-pled facts when reviewing a section 2 –615

motion to dismiss, a complaint will not survive this analysis if it consists only of conclusory or speculative allegations. *Time Savers v. LaSalle Bank*, 371 Ill. App. 3d 759, 767 (2nd Dist. 2007). This means mere conclusions unsupported by specific facts are not accepted as true.

- **2-619**

A 735 ILCS5/2-619 motion admits as true all well pleaded facts and reasonable inferences drawn from those facts, but not conclusions of law or conclusions of fact unsupported by specific facts. *Am. Health Care Providers v. County of Cook*, 265 Ill App. 3d 919, 922 (1st Dist. 1994). A 2-619 motion is properly granted only when it raises affirmative matter which negate plaintiff's cause of action completely or when it refutes crucial conclusions of law or conclusions of material fact that are unsupported by allegations of specific facts. *Health Employees Labor Program of Metropolitan Chicago v. County of Cook* 236 Ill. App. 3d 93, 97(1st Dist. 1992). Granting a 2–619 motion to dismiss is proper only when it appears no set of facts can be proved entitling plaintiff to recover. Where defects do not appear on the face of the pleadings, affidavits can be filed stating affirmative matters that justify dismissal. In addressing a section 2–619 motion, a court takes all well-pleaded facts in the complaint as true and only the complaint's legal sufficiency is contested *Welch v. Illinois Supreme Ct.*, 322 Ill. App. 3d 345, 350 (3rd Dist. 2001).

- **Gotion & Spruce 2-615 Motion to Dismiss Counts I, IV—Violation of §11-13-15**

Counts I and IV of Plaintiffs' 2nd Amended Complaint allege prospective violations of the Manteno Village Code by asserting Gotion's operations will involve the use of highly toxic materials and create hazardous conditions which are prohibited by the Code. Plaintiffs argue these allegations are sufficient to state a claim under 65 ILCS 5/11-13-15, allowing for prospective challenges. Gotion's motion to dismiss challenges the sufficiency and timing of

these allegations, arguing they are speculative and premature, but Plaintiffs counter the claims are adequately pled and ripe for judicial review.

In summary, §11-13-15 provides:

> if any building or land is used in violation of an ordinance adopted pursuant to Illinois Municipal Code Division 13, 31, or 31.1, the local municipal authority or any landowner within 1200 feet in any direction of the property who shows his property will be substantially affected by the alleged violation may institute any appropriate action to prevent unlawful use, to prevent occupancy or use of the land, to prevent illegal use in or about the premises, or to restrain the violation. When an action is instituted by an owner of land, the municipality must receive proper notice. The court has the power and discretion to issue a restraining order, preliminary injunction, or permanent injunction under such terms and conditions to do justice and enforce the purposes of this section. An owner does not have to prove any specific, special, or unique damages to himself or his property or any adverse effect on his property from the alleged violation to maintain a suit under this section. This section does not authorize a suit against the municipality (except for municipality owned lands) or municipality officials for administration, enforcement, or implementation regarding this Division.

The plain language of statute in §11-13-15 is clear—it does authorize an action for a landowner within 1200 feet of the property to institute an action to prevent unlawful use of land if the landowner shows his property will be substantially affected by the violation.

Plaintiffs, including a landowner within 1200 feet of the property, brought Count I pursuant to §11-13-15 alleging Gotion's proposed use of the land will violate Village Code §9-9A-3 referencing §9-9A-7 prohibiting "any use that creates any external odor, smoke, dust, noise, or glare or that involves the use of any radioactive or highly toxic materials, as determined by the code enforcement officer." Gotion argues the complaint is premature because no code violation has occurred. Plaintiffs argue their complaint is not premature and the statute supports this position because the plain language of §11-13-15 allows for a claim "to prevent unlawful use of land." §11-13-15; See also *Greer* (neighbors alleging a proposed

development violated a zoning ordinance); *Nonnenmann v. Lucky Stores*, 53 Ill. App. 3d 509, 512 (3rd Dist. 1977) (plaintiff contesting defendant's proposed use of property).

The court finds per the plain reading of the statute and the case law, Plaintiffs do not need to wait until the proposed use of the land commences to bring a lawsuit under §11-13-15. Further, Illinois law holds it is the nature of the zoning violation itself that establishes the "substantial effect" sufficient to enable an owner within the requisite 1200 feet to maintain an action for injunctive relief and in this manner §11-13-15 achieves the legislative purpose of expanding the scope of persons entitled to rely upon this section to seek injunctive redress for zoning ordinance violations. *Greer v. Illinois Hous. Dev. Auth.*, 150 Ill. App. 3d 357, 390 (1st Dist. 1986), aff'd, 122 Ill. 2d 462 (1988).

In Counts I and IV, Citizens allege the Gotion Plant violates or will violate Manteno Code § 9-9A-3 by using highly toxic chemicals, which can harm the public by causing birth defects, liver disease, and other adverse health effects. The complaint further alleges violations of Manteno Code §§ 9-9C-2(B) and 9-9C-4, claiming the plant will create dangerous conditions adversely affecting the surrounding area such as fire hazards, noise, and air pollution. It also alleges violations of Manteno Code § 9-9B-9(A),(C),(H) due to the intended storage of lithium batteries outside the plant in the event of a fire and any permits applied for by Gotion to operate the plant violate the Manteno Code because they will be for a use not permitted by the code.

Gotion argues Citizens fail to state a claim under § 11-13-15 because they do not sufficiently allege violations of the Manteno Code. It asserts the Manteno Code does not define the materials used by Gotion as "highly toxic" and the Building & Zoning Director "made an official preliminary determination Gotion is not using 'highly toxic' materials." The October 3,

2024 Temporary Occupancy Permit determination was limited to 4 chemicals on the Gotion Safety Data Sheet that are being used or stored by Gotion during the temporary occupancy period, but the determination does not include all the chemicals required to be used once lithium battery production begins. The motion further argues the allegations are speculative and do not establish any current or prospective violations of the Manteno Code.

The 2nd Amended Complaint identifies lithium iron phosphate, synthetic graphite, and N-methylpyrrolidone (NMP) as chemicals to be used by Gotion in the manufacturing of lithium-ion batteries. ¶61. Gotion admitted to using lithium iron phosphate and synthetic graphite, and although initially unsure about NMP, later confirmed its use in the manufacturing process. ¶63. Lithium iron phosphate is described as toxic in doses as low as 1.5 to 2.5 mEq/L in blood serum, and it is noted as a potential teratogen, which may cause birth defects and impair fertility. ¶¶ 65, 66 with supporting reference contained in footnote 9. The EPA advises against releasing NMP into the environment due to its potential to cause birth defects, cancer, and toxicity to the immune system and liver. ¶68 with supporting reference contained in footnote 11. Documents provided to Gotion highlight the severe ecological and health risks associated with NMP. ¶69 with supporting Safety Report attached as Exhibit 4. The 2nd Amended complaint references studies and advisories, including those from the EPA, to support claims about the harmful nature of these chemicals. Footnotes 9, 10, 11.

The Manteno Code prohibits the use of highly toxic materials, but it does not define "highly toxic" explicitly. The determination is left to the discretion of the Code Enforcement Officer Exhibit 6 October 3, 2024 Temporary Occupancy Permit states:

> Title 9, Zoning of the Manteno Code does not define “highly toxic.” Instead, Section 9-9B-7 gives the director of building and zoning the discretion to determine whether a material is “highly toxic” and thus prohibited.[2] Nevertheless, the Village has adopted certain technical codes governing the use and

occupancy of real property. (Manteno Code, Section 8-1-13). Two of the technical codes adopted by the Village—the 2015 International Building Code and the 2015 International Fire Code[3] define "highly toxic" as: ...

[2] the office of Code Enforcement no longer exists and any references to the code enforcement officer in this code shall mean the director of building and zoning.

Plaintiffs argue the Manteno Code's definition of "highly toxic" should apply to the materials used by Gotion, as outlined in the technical codes adopted by the Village.

The 2nd Amended Complaint alleges the chemicals at issue violate Manteno Code § 9-9A-3, which prohibits highly toxic materials. Exhibit 4 contains emails discussing the use of NMP in the manufacturing process. Exhibit 5 lists additional chemicals, including Lithium Hexafluorophosphate, which will also be used by Gotion. The Building & Zoning Director for Manteno, Mr. LaRocque, made an official preliminary determination that Gotion is not currently storing or using "highly toxic" materials. Plaintiff asserts this determination is false. The determination also does not cover chemicals to be stored and used by Gotion in the future.

In ruling on the §2-615, the court viewed the pleadings and supporting documents in the light most favorable to Plaintiffs, the nonmoving party. A motion to dismiss under section 2-615 attacks the legal sufficiency of a complaint, requiring the court to determine whether the allegations in the complaint are sufficient to state a cause of action upon which relief may be granted. *Station Place Townhouse Condominium Association v. Village of Glenview*, 2022 IL App (1st) 21113. Illinois is a fact-pleading state, meaning a court cannot rely upon conclusions of law or conclusory factual allegations unsupported by specific facts in ruling on a section 2-615 motion to dismiss. *Prakash v. Parulekar*, 2020 IL App (1st) 191819. The 2nd Amended complaint includes specific facts supported by studies, advisories, and references contained in the Exhibits attached to the complaint and cited in the footnotes and filed with the court to

support the allegations the materials at issue (currently and/or to be used in the future) are highly toxic. The court finds the supported allegations are not conclusory and sufficient at the pleading stage to overcome the 2-615 Motion to Dismiss regardless of the determination by the Manteno Building & Zoning Director in the October 3, 2024 Temporary Occupancy Permit the materials currently stored and used by Gotion are not highly toxic.

The court finds the allegations when considered in a light most favorable to the plaintiff are sufficient to state a cause of action upon which relief can be granted because the complaint contains a set of alleged facts if proven would entitle plaintiff to recovery. Therefore, Gotion's 2-615 Motion to Dismiss as to Counts I and IV regarding violation of §11-13-15 are denied.

- **Gotion & Spruce 2-619 Motion to Dismiss Counts I, IV—Violation of §11-13-15**

The doctrine of exhaustion of administrative remedies is not absolute. Illinois courts recognize exceptions to this doctrine, particularly when the administrative agency cannot provide an adequate remedy or when it is patently futile to seek relief before the agency or if there is irreparable harm. The Illinois Supreme Court recognized the following exceptions to the doctrine of exhaustion of administrative remedies where (1) a statute, ordinance, or rule is attacked as unconstitutional on its face; (2) multiple administrative remedies exist and at least one is exhausted; (3) the agency cannot provide an adequate remedy or it is patently futile to seek relief before the agency; (4) no issues of fact are presented or agency expertise is not involved; (5) irreparable harm will result from another pursuit of administrative remedies; or (6) the agency's jurisdiction is attacked because it is not authorized by statute. *Castaneda v. IL. Dept. of Human Rights*, 132 Ill. 2d 304,308-09 (1989). These principles are well-established in Illinois case law.

Gotion argues Plaintiffs did not exhaust administrative remedies—a prerequisite under § 11-13-15 of the Illinois Municipal Code. Gotion asserts Plaintiffs should have appealed the October 3, 2024 determination by Manteno's Director of Building and Zoning that no "highly toxic" materials are currently being stored or used at the Gotion property to the Planning Committee pursuant to Manteno Code § 9-14-7(A). Manteno Code § 9-14-7(A) states:

> determinations of the Director of Building and Zoning are appealable to the Planning Commission and the appeal must be filed with the Village Clerk within 20 days from the date of the action on which the appeal is taken specifying the grounds. Manteno Code § 9-14-11(B).

Gotion submitted a rezoning request on October 12, 2023. Plaintiffs presented evidence of highly toxic materials at the November 21, 2023 public meeting. The Village approved the rezoning request on December 5, 2023. The complaint was filed on December 22, 2023 alleging violation of 65 ILCS 5/11-13-15 and Manteno Village Code §9-9B-7 regarding highly toxic chemicals. Defendants filed Motions to Dismiss the Complaint for various reasons, but did not argue Plaintiff failed to exhaust administrative remedies. On October 3, 2024, almost 1 year after the complaint was filed, the Village of Manteno's Director of Building and Zoning made a non-public determination Gotion is not currently storing or using highly toxic chemicals under Manteno Village Code §9-9B-7 in the Temporary Occupancy Permit.

At the time the lawsuit was filed, there was no determination and no administrative remedy to pursue. This non-public determination was made 11 months after the lawsuit was filed regarding the very issue of highly toxic chemicals; curiously, none of the Defendants provided notice of this administrative decision to Plaintiffs. Plaintiffs inadvertently discovered this non-public determination through a general FOIA request during the pendency of this litigation. A 2nd Amended Complaint was filed on November 14, 2024 (after the Determination

but not because of the Determination) and Defendants now argue Plaintiff failed to exhaust their administrative remedies by failing to appeal the non-public determination made, but not disclosed during the pendency of this lawsuit.

The Determination in the Temporary Occupancy Permit did not provide notice to Plaintiffs—a potentially aggrieved party—and was not of record. Further, it is not clear if Plaintiffs are an "aggrieved party" who have standing to object to and appeal the issuance of a Temporary Occupancy Permit because they do not own the land and are not a direct party to the Permit. The court finds the Village cannot provide an adequate remedy and it is patently futile to seek relief before the agency when they withheld notice of this Determination to Plaintiffs during the pendency of this lawsuit, but now seek to use this lack of notice to dismiss this lawsuit. Defendants cannot use administrative remedies as both a sword and a shield.

The Village approved the re-zoning request with full knowledge Gotion plans to operate a Lithium Battery factory pursuant to an executed REV Agreement with the State of Illinois making Gotion eligible for up to 213 million in tax benefits over 30 years. This approval was made 11 months prior to the Determination in the Temporary Occupancy Permit Gotion is not currently storing or using highly toxic materials. The Village had the same information about the highly toxic materials necessary and expected to be used by Gotion when it approved the re-zoning that the Director of Building and Zoning had when he issued the Temporary Occupancy Permit. It is clear the Village's position is Gotion will not use highly toxic materials to manufacture lithium batteries. Further, the administrative appeal of the Temporary Occupancy Permit is ultimately determined by the Village Board:

> Under the Manteno Code, determinations of the Director of Building and Zoning are appealable to the Planning Commission. Manteno Code § 9-14-7(A). The Planning Commission holds a hearing and renders a written recommendation on the appeal within sixty days after closing the public hearing. The Village Board

then may affirm or reverse, wholly or in part, or modify, the determination of the Director of Planning and Zoning. All decisions of the Village Board are subject to judicial review. Manteno Code § 9-14-11(D).

The court finds appealing the Temporary Occupancy Permit is patently futile. If Planning Commission did reverse the determination, the Village Board is the final decision maker and it made its decision known when it granted the rezoning after a public hearing where objections were made and evidence of highly toxic materials was presented. The court finds Plaintiffs are not required to exhaust their administrative remedies and if they have standing to are not required to appeal the non-public Temporary Occupancy Permit. *Constantine v. Vill. of Glen Ellyn*, 217 Ill. App. 3d 4, 14–15 (2nd Dist. 1991) .

It is well established in Illinois case law administrative remedies may be inadequate in preventing irreparable harm. In *Village of Bensenville*, the trial court was criticized for its reliance on administrative agencies to address the potential release of hazardous substances and the Appellate court noted the court had a responsibility to determine whether the proposed activity would constitute a public nuisance without deferring to administrative bodies. *Village of Bensenville v. City of Chicago*, 389 Ill. App. 3d 446 (2nd Dist. 2009) (highlighting the reliance on administrative remedies was misplaced both from an evidentiary and institutional perspective). *Village of Bensenville* underscores courts must not abdicate their judicial function when immediate and severe environmental harm is at stake. Even *assuming arguendo* there are administrative remedies to be exhausted, the supported allegations in the 2nd Amended complaint regarding the potential release of "highly toxic" chemicals into the environment (air, water) including lithium fire hazards are a matter of potential catastrophic harm and substantial injury risk justifying immediate judicial intervention rather than waiting for administrative remedies. The court finds the potential for catastrophic environmental damage and public

health risks associated with lithium battery manufacturing justifies immediate judicial intervention rather than relying on potentially lengthy and inadequate administrative remedies. Further, Illinois courts consistently recognize the necessity of preventing irreparable harm through the injunction process in cases involving hazardous substances.

The court finds the allegations when considered in a light most favorable to the Plaintiff, accepting as true all well-pleaded facts, and drawing all reasonable inferences in the favor of Plaintiffs are sufficient to state a cause of action upon which relief can be granted because the complaint contains a set of alleged facts if proven would entitle plaintiff to recovery. Therefore, Gotion's 2-619 Motion to Dismiss as to Counts I and IV regarding violation of §11-13-15 are denied.

- **Gotion and Spruce 2-615 Motion to Strike National Security**

Plaintiffs' 2nd Amended Complaint includes allegations the operations of Gotion at the rezoned property pose a national security risk. The Defendants moved to dismiss these allegations arguing that they are irrelevant to the legal claims at issue and serve only to inflame the proceedings. Plaintiffs contend these allegations are directly relevant to their claims under 65 ILCS 5/11-13-15 which seeks to prevent the unlawful use of land that may endanger public welfare. Plaintiffs alleged the use of certain materials at the rezoned property could violate zoning ordinances and pose a risk to national security, which, if proven, could substantiate their claims under 65 ILCS 5/11-13-15. Defendants argue allegations concerning national security are irrelevant and inflammatory while Plaintiffs assert the allegations are material to the claims presented.

Plaintiffs argue the potential use of such materials violates local zoning ordinances and also poses broader risks, including national security concerns, due to the nature of the

materials and their potential misuse. This court recognizes allegations of national security risks, if substantiated, could significantly impact the public interest and the legal standards applicable to zoning and land use. Plaintiffs provided a basis for these allegations by referencing specific materials and processes involved in Gotion's operations, which they claim could be exploited in ways that threaten national security. Defendants' argument the national security allegations are irrelevant fails to consider the broader implications of Plaintiffs' claims. The potential national security risks associated with the use of "highly toxic" materials are directly related to the Plaintiffs' efforts to prevent unlawful land use that could endanger public welfare. As such, the court finds these allegations are relevant and material to the Plaintiffs' claims.

Under Illinois law, a complaint must allege facts sufficient to state a claim upon which relief can be granted. The court must accept all well-pleaded facts as true and draw all reasonable inferences in favor of the Plaintiffs at this stage. Thus, at the pleading stage, the court finds these allegations are not merely speculative or inflammatory but are grounded in factual assertions that warrant further examination during discovery. Therefore, the Defendants' Motion to Strike the national security allegations is denied and these allegations shall remain part of the complaint as the case proceeds to discovery.

- **Village and Gotion's 2-619(a)(9) Motion to Dismiss Counts VII-X—Standing**

In Illinois, to establish standing, Plaintiffs must demonstrate an injury in fact to a legally cognizable interest. The injury must be distinct and palpable, fairly traceable to the defendant's actions, and substantially likely to be prevented or redressed by the requested relief. Plaintiff has the burden of proving standing and the injury must be more than a generalized grievance shared by the public. To establish standing for Count VII – X, Plaintiffs must show they were

caused specific harm distinct from the general public and must show this harm is a distinct and palpable injury specific to them, not merely speculative or hypothetical.

Plaintiff, Brian Kovaka, alleged the rezoning will exacerbate his existing health conditions and decrease his property value which are specific injuries not shared by the general public. These allegations, if proven, demonstrate a distinct and palpable injury traceable to the rezoning decision. Plaintiffs allege spot zoning leads to increased truck traffic, noise, and environmental hazards, which will specifically impact Brian Kovaka's health and property enjoyment . Plaintiffs allege the contract zoning leads to environmental and health risks specific to certain properties, particularly affecting Brian Kovaka's health due to his proximity to the Gotion Plant. These specific allegations support a finding of standing. Plaintiffs allege the use of toxic chemicals and increased fire risks will specifically harm Brian Kovaka's health and property, distinct from the general public. These allegations, if substantiated, establish standing.

The court finds Plaintiffs alleged specific harms are distinct and palpable, traceable to the defendants' actions, and likely to be redressed by the requested relief. These allegations, particularly concerning Brian Kovaka's health and property, demonstrate special harm sufficient to establish standing for Counts VII through X.

- **Village and Gotion's 2-603 Motion to Dismiss—not plain and concise**

The 2nd Amended Complaint was structured to address the Court's previous concerns and to comply with the requirements of § 2-603. The plaintiffs separated allegations and provide detailed factual support for each claim making the 2nd Amended Complaint clear and concise enough to survive the § 2-603 Motion to Dismiss. The purpose of 2-603 is to provide notice to the court and the parties of the claims being presented and 2-603(c) provides

pleadings shall be liberally construed with a view to doing substantial justice between the parties. Pleadings must be comprehensible and deserving of response, even if they could be modified for length and clarity . McCarthy v. Allstate, 76 Ill. App. 3d 320 (1979). This principle is reinforced by §2-612(b), which provides no pleading is bad in substance if it reasonably informs the opposite party of the nature of the claim or defense. 735 ILCS 5/2-612. Illinois courts consistently hold pleadings are not intended to create technical obstacles but to facilitate the resolution of real and substantial controversies. Papadakis v. Fitness, 19 IL 116, LLC, 2018 IL App (1st) 170388. The court finds the 2nd Amended Complaint is clear and concise enough to be answered. Village and Gotion's 2-603 Motion to Dismiss is denied.

- **Village and Gotion's 2-615(a) Motion to Dismiss Count VII—as applied challenge**

This matter comes before the court on Defendant's 2-615(a) Motion to Dismiss Plaintiffs' as-applied challenge to the rezoning of the property located 333 S. Spruce Street, Manteno, Illinois from I-1 light industrial to I-2 heavy industrial. Plaintiffs allege the rezoning is unconstitutional as applied to the property. The court considered the sufficiency of the Plaintiffs' allegations under the *6 LaSalle* factors and the 2 *Sinclair* factors. *La Salle Nat. Bank of Chicago v. Cook Cnty.*, 12 Ill. 2d 40, 46 (1957); *New Lenox State Bank v. Cnty. of Will,* 205 Ill. App. 3d 457, 465 (3rd Dist. 1990); *Sinclair Pipe Line Co. v. Village of Richton Park,* 19 Ill. 2d 370 (1960). *Van Duyne v. City of Crest Hill*, 136 Ill. App. 3d 920, 924 (3rd Dist. 1985).

Plaintiffs allege the rezoning of the property from light industrial to heavy industrial use is arbitrary and capricious violating their substantive due process rights. They argue the rezoning does not serve a legitimate public interest and is not rationally related to any legitimate governmental objective. Plaintiffs rely on the *LaSalle* factors to support their claim asserting the rezoning fails to consider the character of the neighborhood, the suitability of the

property for the zoned purpose, and the impact on property values. They argue they identified the substantive rights violated by the rezoning and sufficiently identified the rezoning as violating the *LaSalle* factors.

Defendants argue the rezoning serves a legitimate public interest by aligning with the Village's 2006 Comprehensive Plan for economic development as it will bring significant economic benefits, including a $2 billion investment and the creation of 2,600 jobs, which are expected to be paid at least 120% of the average wage for similar jobs in Kankakee County. Defendants contend the rezoning is rationally related to these objectives and the Plaintiffs failed to demonstrate the rezoning is arbitrary or capricious. Defendants argue *LaSalle* factors support the rezoning because the area is transitioning to a mixed-use development and the property is suitable for industrial use given its proximity to transportation infrastructure.

In evaluating an as-applied challenge to a zoning decision, the court analyzed the LaSalle and Sinclair factors.

1. Existing use and Zoning of nearby property

Plaintiffs allege the rezoning is inconsistent with the pre-dominantly C-2 commercial district and I-1 light industrial character of the area including schools, pre-schools, churches, and residential homes. They argue introducing heavy industrial use will disrupt the community and decrease the quality of life for residents. Plaintiff argue the rezoning is inconsistent with the existing uses and zoning of nearby properties, which remain predominantly commercial and light industrial. Plaintiffs contend rezoning violates the Village's 2006 Comprehensive Plan. The court finds Plaintiff sufficiently alleged the rezoning creates a disparity with the surrounding area, potentially supporting a claim of arbitrariness.

2. Diminution of Property Values

Plaintiffs allege property values will diminish due to the use of highly toxic materials, increased truck traffic, fire risk, and overall hazard risk. The plaintiff claims the rezoning significantly diminishes the property's value by restricting its potential uses. The court acknowledges Plaintiff present a plausible set of facts the rezoning adversely impacts the property's marketability and value.

3. Public Welfare Considerations

Plaintiffs allege the destruction of property value will not promote public health, safety, and general welfare, but instead expose Manteno Plaintiffs to toxic materials, fire risk, and dust. Defendants assert the rezoning promotes public welfare by aligning with the Village's 2006 comprehensive plan. Plaintiff contend the rezoning does not substantially advance public health, safety, morals, or general welfare. At the motion to dismiss stage, Plaintiffs pled a set of facts if proved could support this element of the cause of action.

4. **Relative Gain to the Public vs. Hardship to the Owner**

Plaintiffs argue the relative hardship to Gotion is minimal because the Gotion Property value will not diminish if zoned I-1 instead of I-2. Plaintiffs allege the property is unsuitable for the rezoned purpose due to the adjacent quarry, proximity of residential housing and schools, and substantial rework needed to convert the distribution center into a manufacturing plant. Plaintiff allege the hardship imposed by the rezoning outweighs any public benefit. The court finds Plaintiff's allegations, if proven, could demonstrate the rezoning imposes an undue burden on the property owner without corresponding public gain.

5. **Suitability of the Property for Zoned Purposes**

Plaintiffs allege the rezoning is inconsistent with the pre-dominantly C-2 commercial district and I-1 light industrial character of the area including a quarry, schools, pre-schools,

and churches. They argue introducing heavy industrial use will disrupt the community and decrease the quality of life for residents. Plaintiffs further contend the rezoning does not promote the public welfare and imposes an undue hardship on them. Plaintiffs claim the rezoning disregarded the contention the property is not suitable for heavy industrial use due to its size, location, and existing infrastructure rendering unusable for its intended purpose. Plaintiffs argue the rezoning significantly decreases the value of their property and surrounding properties causing economic harm to the community. The plaintiff contends that the property is unsuitable for the purposes permitted under the new zoning classification. The court finds Plaintiffs sufficiently alleged facts to support this claim at the pleading stage.

6. **Length of Vacancy**

Plaintiffs allege the property has only been vacant for 3 years, two of which were during the COVID-19 pandemic.

7. **Community Need for Proposed Use**

Plaintiffs argue the community does not need the harmful chemicals, increased traffic, reduced air quality, and heightened fire risk especially when rezoning violates the Village's 2006 Comprehensive Plan.

To survive a 2-615 Motion to Dismiss, Plaintiffs must allege facts, if true, entitle them to relief under the *LaSalle* factors and demonstrate the rezoning is arbitrary and capricious and unconstitutional as applied to the property. The court finds Plaintiffs sufficiently alleged the rezoning diminished property value and does not support the public welfare and needs of the community. These allegations, taken as true for the purposes of this motion, are sufficient to state a claim under the *LaSalle* factors. Under the *LaSalle* factors, Plaintiffs presented sufficient allegations and ultimate facts to survive the 2-615(a) Motions to Dismiss. Plaintiffs'

as-applied challenge to the rezoning raises plausible claims that warrant further factual development. The allegations, when viewed in the light most favorable to Plaintiffs, suggest the rezoning may not be rationally related to a legitimate governmental objective. Therefore, Plaintiffs are allowed to proceed with their as-applied challenge. The court will require further factual development to determine the merits of Plaintiffs' claims and the validity of the rezoning under the *LaSalle* factors. The court considered Defendants' argument the rezoning aligns with the Village's 2006 Comprehensive Plan. While this may ultimately support the rezoning's validity, it does not negate Plaintiff's allegations at this stage of the proceedings because the court must accept Plaintiffs' well-pleaded facts as true and draw all reasonable inferences in their favor. Accordingly, Defendants' Motions to Dismiss are denied.

- **Village and Gotion's 2-615(a) Motion to Dismiss Count VIII—spot zoning**

Spot zoning is defined as the application of zoning to a specific parcel of land within a larger zoned area when the reclassification is not in harmony with the comprehensive zoning plan and is designed to benefit a particular property owner rather than the community as a whole. To establish a claim for spot zoning, Plaintiffs must demonstrate the zoning classification applies only to a small area and it violates a zoning pattern that is homogenous, compact, and uniform. Plaintiffs' complaint fails to allege the zoning pattern in and around the rezoned property is homogenous, compact, and uniform. The complaint acknowledges the properties surrounding the rezoned property are zoned for various uses, including agricultural, residential, commercial, and industrial purposes. These admissions undermine the claim of spot zoning because they demonstrates a lack of uniformity in the zoning pattern around the rezoned property.

The complaint asserts the rezoning violates the zoning structure envisioned by the 2006 Comprehensive Plan, but the complaint does not provide specific allegations showing how the I-2 zoning of the rezoned property is incompatible with the surrounding zoning classifications or the comprehensive plan. The mere assertion the comprehensive plan does not support I-2 zoning is insufficient to establish a claim for spot zoning. There can be no unlawful intrusion into a uniformly zoned area that is not uniformly zoned.

The Second Amended Complaint does not meet the pleading requirements necessary to survive a motion to dismiss under 735 ILCS 5/2-615 on the issue of spot zoning. See, *Chicago Title & Trust Co. v. Village of Skokie*, 60 Ill. App. 3d 221 (no spot zoning when a property is surrounded by several zoning classifications and uses). Plaintiffs failed to allege facts demonstrating a homogenous zoning pattern around the rezoned property which is necessary to support a spot zoning claim. The court determines there is no set of facts Plaintiffs can prevail on because the lack of a homogenous zoning pattern is fatal to the cause of action. Defendants' 2-615 Motion to Dismiss is granted with prejudice for failing to state a claim upon which relief can be granted.

- **Village and Gotion's 2-615(a) Motion to Dismiss Count IX—illegal contract zoning**

Plaintiffs allege the rezoning of the rezoned property constitutes illegal contract zoning. Defendants argue Plaintiffs failed to state a claim upon which relief can be granted. Under Illinois law, contract zoning occurs when a municipality contracts away its zoning authority in exchange for benefits that have no bearing on the merits of the zoning amendment. To establish a claim for illegal contract zoning, Plaintiffs must allege the zoning authority engaged in nonuniform bartering of its legislative discretion in return for emoluments from the applicant that had no bearing on the merits of the requested amendment. Here, Plaintiffs allege the

Village did not rezone the property based on the merits of the rezoning request, but rather rezoned the property to facilitate the REV Agreement between the State of Illinois and Gotion which provided substantial financial incentives to Gotion.

Plaintiffs assert this agreement effectively bound the Village to rezone the property thereby infringing on the municipal zoning authority. Plaintiffs do not allege the existence of a direct contractual arrangement between Gotion and the Village and do not allege Gotion provided any benefits to the Village in exchange for the rezoning. The Village argues the absence of a direct contract between Gotion and the Village is fatal to the Plaintiffs' claim. The Village contends Plaintiffs' reliance on the REV Agreement between Gotion and the State of Illinois is insufficient to establish illegal contract zoning because the agreement does not involve the Village as a party.

The Court finds Plaintiffs have not sufficiently alleged the elements of illegal contract zoning. Plaintiffs' allegations focus on the REV Agreement between Gotion and the State of Illinois, which does not involve the Village as a party. Plaintiffs did not allege the Village engaged in any nonuniform bartering of its legislative discretion with Gotion and Plaintiffs did not allege Gotion provided any benefits to the Village in exchange for the rezoning. Without such allegations, Plaintiffs fail to state a claim for illegal contract zoning.

Plaintiffs failed to allege sufficient facts to support a claim for illegal contract zoning and no set of facts can be alleged to make the Village a party to the contract with the State and Gotion. Accordingly, Defendants' 2-615(a)(1) Motion to Dismiss Count IX of the Second Amended Complaint is granted with prejudice as Plaintiffs did not indicated any additional facts that could cure the deficiencies in their claim.

- **Village and Gotion's 2-615(a) Motion to Dismiss Count X—Legislative Act**

In Count X, Plaintiffs seek a declaratory judgment finding the Village's rezoning of the Gotion land to I-2 Industrial invalid for an alleged violation of Village Code §9-14-13 (careful consideration), §9-9A-3 (prohibiting toxic chemicals per 9-9A-7), and §9-9B-9 (A),(C),(H) (warehouse, outside storage, and waste materials). Count X of the Second Amended Complaint alleges the Village of Manteno's approval of the rezoning application from I-1 Light Industrial to I-2 Heavy Industrial for the rezoned property violates the Manteno Code and is arbitrary, unreasonable, and capricious, bearing no substantial relation to public health, safety, or welfare. Plaintiffs further allege the Plan Commission failed to carefully consider the rezoning application as required by Manteno Code § 9-14-13.

Village argues the court does not have the authority to make this determination and Count X should be dismissed because the Court lacks authority to invalidate legislative acts based on a municipality's failure to comply with its own procedural rules, absent a corresponding statutory or constitutional violation. Village contends Plaintiffs did not alleged any violation of a state or federal statute or constitutional provision that would warrant judicial intervention. Illinois law is very clear on this issue holding a court cannot handle matters which in effect are attempts to overrule decisions of a legislative body based upon alleged failure to follow requirements imposed by that body itself. *Chirkos v. Yellow Cab*, 87 Ill. App. 3d 569, 574 (1st Dist. 1980). *Chirkos* further held a court may not act to invalidate legislation simply upon considerations of what litigants, attorneys, or the court regard as the public welfare.

Chirkos and the body of case law on this issue state the court only has authority to invalidate legislation adopted by a legislative body (here the Village) on grounds the enactment violates a provision of the Federal or State constitutions or violates the mandate of a State or Federal statute. The Illinois Supreme Court stated the matter succinctly: " * * * it is not the

function of the judiciary to pass upon the wisdom of legislative action." *Finish Line Express*, 72 Ill. 2d 131, 138 (1978). The Supreme Court noted the courts have no legal power "to correct what amounts to an alleged error of judgment on the part of a legislative body." *Finish Line Express* at 138.

A cause of action should not be dismissed pursuant to section 2-615 unless it is clearly apparent the plaintiff cannot prove any set of facts entitling plaintiff to recovery. However, mere conclusions of law or facts unsupported by specific factual allegations in a complaint are insufficient to withstand the Village's 2–615 Motion to Dismiss. Under the case law, Plaintiff may state a cause of action requesting the court to invalidate legislation adopted by the Village only on the specific grounds the enactment violated a provision of the Federal or State constitutions or violates the mandate of a State or Federal statute. Count X fails to adequately plead such a cause of action.

Plaintiffs failed to allege the specific constitutional and/or statutory provisions the rezoning violated and failed to allege specific and ultimate facts in support. The court will not accept general conclusions of law and fact, but requires specific factual allegations. The allegations in Count X primarily focus on Village's purported failure to comply with its own ordinances, which, under Illinois law, is insufficient to state a claim for relief. The Court finds Plaintiffs did not pleaded the necessary statutory or constitutional violations to sustain Count X. The Village and Gotion's 2-615(a) Motion to Dismiss is granted with prejudice for failure to state a cause of action and Plaintiffs did not indicated any additional facts that could cure the deficiencies in their claim that would permit the Court to invalidate the rezoning under Illinois law.

THE COURT ORDERS:

1. Gotion and Spruce's 2-615(a) Motion to Dismiss Count I and IV regarding violation of §11-13-15 are denied. Defendants are given 45 days to answer.

2. Gotion and Spruce's 2-619 Motion to Dismiss as to Counts I and IV regarding violation of §11-13-15 are denied. Defendants are given 45 days to answer.

3. Gotion and Spruce are granted 45 days to answer Count II and Count V (Prospective Public Nuisance) and to answer Count III and Count VI (Prospective Private Nuisance) of the 2nd Amended Complaint because there are no Motions to Dismiss these counts.

4. Village and Gotion's 2-619(a)(9) Motions to Dismiss Counts VII-X—standing are denied.

5. Village and Gotion's 2-615(a) Motions to Dismiss Count VII-as applied challenge are denied. Defendants are given 45 days to answer.

6. Village and Gotion's 2-615(a) Motions to Dismiss Count VIII—spot zoning is granted and Count VII—spot zoning of the 2nd Amended Complaint is dismissed with prejudice.

7. Village and Gotion's 2-615(a) Motions to Dismiss Count IX—illegal contract zoning is granted and Count IX—illegal contract zoning of the 2nd Amended Complaint is dismissed with prejudice.

8. Village and Gotion's 2-615(a) Motions to Dismiss Count X—legislative act is granted and Count X—legislative act of the 2nd Amended Complaint is dismissed with prejudice.

9. Village and Gotion's 2-603 Motion to Dismiss-not plain and concise is denied.

ENTERED: May 14, 2025

Lindsay Parkhurst

Lindsay Parkhurst, Circuit Judge