2016 IL App (2d) 151233-U
No. 2-15-1233
Order filed August 31, 2016

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

SUSAN HANLON and PHILIP ALTVATER,	)	Appeal from the Circuit Court
	)	of Du Page County.
Plaintiffs-Appellants,	)	
	)	
v.	)	No. 13-CH-3370
	)	
THE VILLAGE OF CLARENDON HILLS	)	
and 88 PARK AVENUE, LLC,	)	Honorable
	)	Terence H. Sheen,
Defendants-Appellees.	)	Judge, Presiding.

JUSTICE BIRKETT delivered the judgment of the court.
Justices McLaren and Hudson concurred in the judgment.

ORDER

¶ 1 *Held*: The Village was not required to comply with the procedures set forth in its ordinances where the procedures were self imposed and not required under State statutes; thus, the dismissal of plaintiffs' claim that the preliminary PUD plan approval had lapsed and the judgment following trial that the Village either had followed or did not need to follow its own procedures was not erroneous. The Village's grant of preliminary PUD approval was not unreasonable and arbitrary.

¶ 2 Following a bench trial in the circuit court of Du Page County in which the trial court upheld the planned unit development (PUD) of defendant, 88 Park Avenue LLC, and approved by defendant, Village of Clarendon Hills, plaintiffs, Susan Hanlon and Philip Altvater, appeal. Plaintiffs argue that (1) the Village's ordinance approving the PUD was unreasonable and

arbitrary and unrelated to the public welfare; (2) the Village did not comply with the procedures set forth in its zoning ordinance in approving the PUD; and (3) the preliminary approval, by the terms of the Village's zoning code, expired, becoming null and void, before the Village undertook the passage of an ordinance extending its preliminary approval of the PUD. We affirm.

¶ 3 I. BACKGROUND

¶ 4 The subject property is located at 103 Prospect Avenue (also known as 88 Park Avenue) in the Village. In 2006, well before the instant controversy, the Village enacted a new zoning ordinance and a downtown master plan. In 2013, the master plan was updated. Under the Village's zoning scheme, the subject property was zoned B-1, Retail Business, meaning that retail businesses, like restaurants and shops, were allowed on the first floor, and residential uses were allowed on the second and higher floors.

¶ 5 The subject property is a roughly triangularly shaped parcel comprising about 18,000 square feet (about 0.4 acre). Prior to the instant controversy, a single family residence had been located on the subject property, but it was razed, and the subject property has been vacant since about 2006. The property is located on the southeast corner of the intersection of Prospect Avenue and Park Avenue. Park Avenue curves along the property's frontage. The northeast corner of the property is its lowest point, and moving westerly along Park Avenue and southerly along Prospect Avenue, the property's grade increases about 11 feet to its highest point in the southwest corner. In February 2013, the property was purchased by the current owner.

¶ 6 Land use within the Village is controlled by the Village's Zoning Ordinance (Village of Clarendon Hills Zoning Ordinance § 20.1.1 *et seq.* (eff. April 4, 1993) (Zoning Ordinance)). The Zoning Ordinance describes the purpose behind the B-1 Retail Business District designation:

"A. This Retail Business District is established for the primary purpose of facilitating existing, and encouraging future, retail trade and shall be located in the core portion of the central business area. The District is designed to create an area where the proximity of adjacent and nearby complementary retail activities in a central retail core will generate multiple consumer interest and support which will act to strengthen each individual use.

B. Nonretail uses placed among retail uses tend to detract from the mutual support retail uses require and generate in the limited central core are and thus, nonretail uses shall be restricted in this District to upper floors or shall be located in the General Business District which surrounds the Retail Business District.

C. The creation of this District is for the purpose of enhancing the appeal that the central business area creates for the community as a whole in attracting persons to reside in the Village and thus enhancing property values; and for the purpose of stimulating sales tax revenue growth, a major source of revenue for funding governmental functions." Village of Clarendon Hills Zoning Ordinance § 20.9.1 (eff. April 4, 1993).

¶ 7 Section 20.9.2 of the Zoning Ordinance recites the permitted uses within the retail business district, including shops of various sorts, retail art galleries, restaurants, and PUDs. Village of Clarendon Hills Zoning Ordinance § 20.9.2 (eff. June 24, 2006). Section 20.9.2 expressly allows offices (a nonretail use) and residential apartment units so long as they are located above the first floor. Section 20.9.3 of the Zoning Ordinance provides a noninclusive list of prohibited uses, expressly including offices and residential uses located on the first floor level. Village of Clarendon Hills Zoning Ordinance § 20.9.3 (eff. April 4, 1993). In addition, section 20.9.4 of the Zoning Ordinance prescribes that a B-1 zoned structure need not have any front

yard, side yard, or rear yard setbacks. Village of Clarendon Hills Zoning Ordinance § 20.9.4 (eff. April 4, 1993).

¶ 8 The Village provided that the scope and purpose of its PUD provisions were:

> "found to encourage creativity and imaginative design for land developments within the village. A [PUD] shall not be considered and is not a separate zoning district in and of itself. It is required that the zoning of all portions of the subject property be appropriate to allow the uses intended within the PUD. PUDs may allow a mixture of land uses within one single tract of land, subject to other provisions and requirements found herein. It is further found that PUDs may permit a maximum choice in types of environment to be available to the public by allowing such use mixtures that would not be possible under the traditional application of other sections of this chapter. PUDs may provide for projects incorporating a single type of facility or related uses which may be planned or developed as a unit. PUDs shall provide amenities not otherwise required under this chapter, and shall provide public, social or recreational facilities and open space, or other benefits to the health and welfare of the community greater and beyond that which would be provided under a strict application of this chapter and subdivision control ordinance of the village. PUDs may consist of conventionally subdivided lots to be sold to individual owners, or unsubdivided single ownership lots. The unique character of PUDs is hereby described as a 'special use', within this chapter and applicable Illinois statutes." Village of Clarendon Hills Zoning Ordinance § 20.14.1 (eff. April 4, 1993).

The remainder of the provision prescribes the process and documentation needed to obtain approval for a PUD. Among the information required are analyses of the impact of the PUD on traffic, schools, stormwater, taxes, and revenues. Village of Clarendon Hills Zoning Ordinance §

20.14.2.C (eff. Oct. 29, 2013). The proposed PUD must also meet the standards necessary to obtain a special use permit. Village of Clarendon Hills Zoning Ordinance § 20.14.3.A (eff. April 4, 1993). Additionally, the proposed PUD must satisfy each of 14 enumerated standards, but the standards may be relaxed if the benefits due to the PUD are tangible, such as the "provision of exceptional amenities, design excellence, additional landscaping, etc." Village of Clarendon Hills Zoning Ordinance § 20.14.3.B (eff. April 4, 1993).

¶ 9 Finally, a preliminarily approved PUD must advance to final PUD plan approval within a year. The Zoning Ordinance provides:

> "For any preliminary PUD approved after September 30, 2010, if the applicant, or its successor, has not filed a complete request for final PUD plan approval within one year of the preliminary PUD plan approval for the PUD, the preliminary PUD plan approval and the accompanying special use permit shall be null and void, unless an extension of time for the filing for a final PUD plan approval shall have been granted by the village board." Village of Clarendon Hills Zoning Ordinance § 20.14.2.C(8) (eff. Sept. 27, 2010).

¶ 10 Also pertinent to the issues in this case, the Zoning Ordinance defines transitional uses and defines the required setbacks for transitional uses.

> "(1) Requirements: In any case where a lot to be devoted to any use other than a use as a dwelling, abuts or is across a right of way from any lot zoned for residential use within the Village, or where any multi-family or nonresidential use abuts an R-1 Zoning District, the use and development of the lot to be devoted to the more intensive use shall be subject to the following requirements:
>
> (a) Building Setback: All buildings shall be set back from any front or

corner side lot line a distance equal to the setback normally required or to the front yard required in the adjacent less intensive district, whichever is greater, and from any other yard line a distance equal to the yard normally required or twenty five feet (25'), whichever is greater.

(b) Landscaping And Screening: Any front or corner side yard or setback required pursuant to subsection D(1)(a) of this section shall be treated as a perimeter landscaped open space. Any side or rear lot line abutting a dwelling use or an R-1 residential district shall be buffered by a perimeter landscaped open space of at least five feet (5') in width along such lot line which shall be sufficient to provide a screen at least six feet (6') in height along the entire length of such line.

(c) Outdoor Activity Areas: Any area of permitted outdoor activity likely to produce visual or auditory disturbance or annoyance on any abutting residential lot shall be separated from said lot by a perimeter landscaped open space at least twenty feet (20') wide or by a buffer found by the community development director to be reasonably sufficient to create a visual barrier to absorb and diffuse noise and to ensure the private enjoyment of said lot.

(2) Exceptions: The provisions of this subsection D shall not apply to any use or structure established prior to July 1, 1993. Furthermore, a property in the B-1 retail business district or the B-2 general business district shall only be required to provide a transitional use setback, as set forth in subsection D(1)(a) of this section, where the rear or interior side lot line of the B-1 or B-2 zoned property directly adjoins a property zoned for residential use." Village of Clarendon Hills Zoning Ordinance § 20.4.11.D (eff. Sept.

30, 2006).

¶ 11 The subject property's rear lot line is adjacent to a property zoned R-1. Additionally, the subject property is across the street from a property zoned R-1.

¶ 12 The subject property is located at the south end of the Village's retail business district. In the Village's comprehensive plan and its downtown master plan, the property's location is deemed to be a gateway into the Village's retail business district. The 2006 downtown master plan suggested possible uses for the subject property: "Develop 4,000 square feet of retail or restaurant. Consider 2 to 3 story mixed-use building with sufficient parking and transition/buffer to adjoining residential." The Village's master plan noted that the subject property provided it with an "[o]pportunity to create a sense of arrival with gateway identity feature." The master plan viewed the subject property as "another opportunity for denser, transitional uses." But it further noted that the subject property could be used for a:

> "redevelopment of the site on the southeast corner of Prospect and Park with a one-story retail development and parking. Due to the size and depth of the site, it would be difficult to fit a multiple story, mixed-use development. Additional development would be acceptable if the developer was able to accommodate parking and sensitively transition to the single-family homes to the south."

¶ 13 North of the subject property along Prospect Avenue, the properties are zoned B-1 and B-2. West of the subject property along Park Avenue, the properties are also zoned B-1 and B-2. The properties north and west of the subject property are used for retail and other uses consistent with their zoning districts. Prospect Avenue is the main street of the Village and represents the hub of retail activity. The establishments to the north of the subject property on Prospect Avenue include a bookstore, a hardware store, a greeting card store, a flower shop, a jewelry

store, a toy store, a coffee shop, and restaurants. Establishments to the west of the subject property along Park Avenue include a Starbucks coffee shop, an insurance agency, and a bank.

¶ 14 Hanlon, the owner of Amazing Grace bookstore, testified that her store is located about a block north of the subject property. In 1997 or 1998, she purchased her property, 16-20 South Prospect Avenue. Hanlon testified that her business depended on visibility, which she believed to be generated by patrons of the other retail businesses in the Village's retail business district. According to Hanlon, Prospect Avenue was the main street in the Village and the key retail area in the Village. Hanlon testified that, in her mind, a retail use on the subject property would benefit all of the other retail uses in the downtown business district, including her store.

¶ 15 South of the subject property, along Prospect Avenue, and to the east of the subject property, along Eastern Avenue, the properties are zoned R-1, single-family residential, and are improved with single-family homes. Altvater testified that his property, 104 South Prospect Avenue, is located directly across from the subject property. Altvater testified that he had owned his property for about 20 years, and it was improved with a single-family, one-and-a-half story home. Altvater testified that the residential properties along Prospect Avenue had a uniform setback, consistent with the provisions in the Village's zoning ordinance.

¶ 16 J. Michael Van Zandt testified that he is the current owner of the subject property. In 2012, Van Zandt entered into discussion with the Village about developing the subject property. Van Zandt wished to develop the property with a multi-unit condominium with no retail uses.

¶ 17 Daniel Ungerleider, community development director for the Village, testified that a residential condominium with no retail uses was incompatible with the B-1 zoning district in which the subject property was located. However, the condominium would be allowed as of right in the R-4, High Density Multiple Dwelling Residential zoning district. Changing the

subject property's zoning to R-4 would not, however, alleviate the difficulty because of the area and site restrictions in that zoning district, such as minimum lot area, maximum lot coverage, setback, height, and floor area requirements. Instead of a zoning change or building an improvement conforming to the B-1 zoning district requirements, Ungerleider realized that Van Zandt would have to construct his proposed condominium as a PUD within the B-1 zoning district.

¶ 18 Ungerleider testified that a PUD was a permitted use within the B-1 zoning district. Ungerleider further testified that, pursuant to the Village's Zoning Ordinance, a PUD should take its character from the underlying zoning district in which it is located. Ungerleider testified that, by making Van Zandt's proposed development into a PUD, the Village could allow a high-density residential condominium to be constructed while avoiding the area and site restrictions for setback, height, floor area, lot coverage, and the like required under a high-density residential zoning regime. Ungerleider testified that he interpreted the Zoning Ordinance to allow any use in connection with a PUD, even if the use was prohibited in the underlying zoning district, for example, by allowing a first-floor residential use in the B-1 zoning district (which otherwise prohibits first-floor residential uses).

¶ 19 As a result of the discussions, Van Zandt ultimately submitted a plan to make the subject property a PUD featuring an eight-unit three-story residential condominium which complied with the height and setback requirements of the B-1 zoning district, and used the first floor of the proposed building as parking for the building's residents. Following an August 22, 2013, Village Plan Commission public hearing, the Plan Commission[1] unanimously recommended that

[1] The Plan Commission is comprised of five members: four architects and one

the Village board approve the PUD. On August 27, 2013, the Village's downtown design review commission also unanimously recommended approval of the PUD. On October 21, 2013, the Village land use committee recommended approval of the PUD.

¶ 20 On October 21, 2013, in a 5 to 1 vote, the Village approved the PUD and enacted Clarendon Hills Ordinance No. 13-10-32 (eff. Oct. 21, 2013) (challenged ordinance), granting preliminary PUD plan approval. The PUD called for a building with a site footprint of 10,000 square feet. No setbacks for the building along either Prospect Avenue or Park Avenue were contemplated, and this complied with the requirements of the B-1 zoning district. The first floor of the building was to be used for parking for the unit owners, and it provided for waste storage and removal along with a private exercise area for the owners. No retail use was included on the first floor. The second and third floors were taken up by the eight condominium units.

¶ 21 On April 4, 2014, almost six months after the grant of preliminary approval, plaintiffs filed a two-count complaint challenging the challenged ordinance and the proposed PUD-condominium development on the subject property. Count I alleged that the challenged ordinance was arbitrary and unreasonable under the factors described in the cases of *LaSalle National Bank of Chicago v. County of Cook*, 12 Ill. 2d 40 (1957), and *Sinclair Pipe Line Co. v. Village of Richton Park*, 19, Ill. 2d 370 (1960) (*LaSalle*/*Sinclair* factors). Count II alleged that the Village, as a non-home rule entity, had not followed its own rules as set forth in its Zoning Ordinance in granting preliminary approval to the proposed PUD.

¶ 22 On April 2, 2015, plaintiffs filed a first amended complaint, adding a count III, and

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community member. It is charged with conducting the architectural review, site-design review, and landscape review of all projects submitted for the downtown business district.

repeating the original two counts. Count III alleged that, under section 20.14.2.C(8) (Village of Clarendon Hills Zoning Ordinance § 20.14.2.C(8) (eff. Sept. 27, 2010)), the preliminary approval for the PUD plan had expired because the owner had not filed a complete request for final PUD plan approval within one year of the grant of preliminary approval. Additionally, count III alleged that the owner had not sought and the Village had not granted an extension before the expiration of the one-year limitation period specified in the Zoning Ordinance.

¶ 23 Defendants filed a motion to dismiss count III pursuant to section 2-619 of Code of Civil Procedure (Code) (735 ILCS 5/2-619 (West 2014)). On July 29, 2015, the trial court granted the motion and dismissed count III with prejudice. The remaining counts advanced to trial.

¶ 24 At trial, the testimony covered the *LaSalle*/*Sinclair* factors and whether the Village was compliant with its ordinances in giving preliminary plan approval to the PUD. To facilitate our analysis below, we will discuss the facts as they relate to those topics.

¶ 25 As an initial matter, we note that the *LaSalle*/*Sinclair* factors are designed to allow a systematic inquiry into the public good versus individual harm when considering whether a zoning ordinance was arbitrary and unreasonable. *Napleton v. Village of Hinsdale*, 374 Ill. App. 3d 1098, 1109 (2007), *aff'd*, 229 Ill. 2d 226 (2008). The *LaSalle*/*Sinclair* factors include: (1) the existing uses and zoning of nearby properties; (2) the extent to which a particular zoning regulation diminishes property values; (3) the extent to which the diminution of the plaintiff's property values promotes the health, safety, morals, or general welfare of the public; (4) the balance between the gain to the public versus the hardship to the individual property owner; (5) the property's suitability for the zoned purpose; (6) the amount of time the subject property has been vacant as zoned in the context of land development in the vicinity; (7) the community's need for the proposed use; and (8) the care with which the community undertook to plan its land-

use development. *Id.* at 1105-06.

¶ 26 Extensive testimony was devoted to the first factor, the existing uses and zoning of properties in the vicinity of the subject property. Allen Kracower, plaintiffs' expert land-planning witness, opined that the subject property was a transitional use. According to Kracower, the subject property took its character from the surrounding single-family residential uses to the south and east and from the retail uses in the Village's downtown to the north and west. Despite the subject property being a transitional use between the R-1 and B-1 zoning districts, Kracower opined that the development approved by the Village in the challenged ordinance did not comply with the subject property's underlying zoning district of B-1 Retail Business District because it contemplated no first-floor retail uses. According to Kracower, the lack of a first-floor retail use caused the development to be out of character with the surrounding retail uses.

¶ 27 Kracower elaborated, explaining that the proposed development was inconsistent with the Village's Zoning Ordinance for several reasons. First, it was not consistent with the general goals and purposes of the B-1 zoning district as laid out in the Zoning Ordinance. According to Kracower's interpretation, the Zoning Ordinance sought to exclude nonretail uses from the first floors in the B-1 zoning district because the retail uses in that zoning district depended on each other, and a nonretail use would disrupt the visibility and referrals hoped to be gained by all of the retail uses working in concert. Second, Kracower noted that the Zoning Ordinance specifically prohibited residential uses on the first floor, so he opined that a building with an exclusive multi-family use (including a residential use on the first floor) did not belong in the B-1 zoning district. Last, Kracower suggested that the Village could have accommodated the eight-unit condominium by rezoning the subject property to R-4, which would have allowed the

building's use as a matter of right; Kracower also conceded, however, that, had the property been rezoned R-4, the approved building could not have been built because of the R-4 zoning classification's site and area restrictions.

¶ 28 Norbert (Pete) Pointner, defendants' expert land-planning witness, testified that the subject property faced commercial uses to its north and west, but was separated from those commercial uses by both Prospect and Park Avenues. Pointner conceded that the proposed building did not comply with the B-1 zoning district because it contemplated a nonretail and residential use for the first floor, but Pointner opined that, because the subject property was separated from the other downtown retail uses by Prospect and Park Avenues, the proposed purely residential use for the building was appropriate. Pointner also opined that proposed use would have been consistent with the Village's R-4 zoning classification, but not the B-1 zoning classification. However, from a zoning perspective, this deviation was acceptable because it was located in a B-1 zoning district, which allowed a building with no front or side setbacks, as had been approved by the Village.

¶ 29 Regarding the second *LaSalle*/*Sinclair* factor, the effect of the proposed zoning on nearby property values, Michael MaRous, plaintiffs' property valuation expert, testified that the proposed development would adversely affect nearby property. MaRous noted that his opinion was based on the large footprint of the proposed building compared to the nearby residential properties, the placement of the proposed building on what was intended to be a gateway into the Village's downtown retail district thereby losing the benefit of the hoped for synergy with the other downtown retail businesses, and the risk that the development would fail, negatively impacting nearby property values.

¶ 30 Similarly, Altvater, who had been a real estate broker working in the area, testified that,

following the approval of the proposed development, two homes that had recently sold spent a longer time on the market than he believed was usual. Altvater testified that each of the homes sold for about 7 to 8% below its market value. Altvater attributed the shortfall to the proposed development of the subject property.

¶ 31 Dale Kleszynski, defendant's property valuation expert, opined that the proposed development would not have a negative impact on surrounding property values. In reaching this opinion, Kleszynski reviewed property values occurring in other suburbs. Kleszynski agreed during plaintiffs' cross-examination that no other suburbs had approved a development that allowed a nonretail use in its core downtown area.

¶ 32 Regarding the third and fourth factors, the promotion of the general public welfare versus the diminution of the value of the plaintiff's property, and the weighing of the benefit to the community compared to the hardship of the individual property owner, Kracower opined that the proposed development offered no benefits to the community, so both weighed in favor of plaintiffs. Kracower testified that the proposed development provided no open space or public amenities; further, the landscaping concession offered by the Village (allowing the owner to landscape in the Village's right-of-way between Prospect and Park Avenues and the bordering lot lines) resulted in a wash because the Zoning Ordinance ordinarily required landscaping within the property's lot lines, so the proposed landscaping created no further public benefit. Pointner, on the other hand, opined that the proposed development was generally beneficial to the public because it used a property that otherwise would have continued to be vacant. Pointner also opined that the proposed development would increase ridership in the nearby train station, which was also a public benefit. MaRous disputed any benefits, opining that there was existing market demand for the subject property to be used as a retail property, but neither the owner nor

the Village conducted any market studies to demonstrate that the subject property could not be developed as it was currently zoned, or that the proposed development represented the highest and best use of the subject property.

¶ 33 Regarding the fifth factor, the suitability of the subject property for the zoned use, Kracower opined that the subject property was not suitable for the approved building. According to Kracower, the approved use, multi-family residential, was inconsistent with the B-1 zoning district. He also opined that it was inconsistent with the transitional use provisions of the Zoning Ordinance because it lacked the prescribed setbacks. Pointner testified that the proposed development was suitable because the Village's updated comprehensive plan suggested a dense residential development on the subject property, and the proposed development provided a transition from the less intense single-family residential uses to the south to the more intense retail uses in the downtown district.

¶ 34 Turning to the sixth factor, the amount of time the subject property was vacant as currently zoned, Kracower testified that, in 2006, the subject property had been improved with a single-family residence, but the residence was razed and the property was rezoned to B-1. Kracower discounted the seven-year stretch of vacancy (until 2013, when the current owner began to inquire about developing the subject property) because of the global recession which impeded development in the Village. Kracower concluded that the property had not been vacant for much time in the context of a *LaSalle*/*Sinclair* analysis. On the other hand, Pointner testified that the property had been vacant for nine years (from 2006 to 2015, the time of trial). To Pointner, this was a fairly lengthy amount of time for the *LaSalle*/*Sinclair* analysis. Plaintiffs emphasize that there was no testimony that the vacancy was caused by the B-1 zoning, meaning that the B-1 zoning district was itself preventing the development of the subject property.

¶ 35 The seventh factor deals with the community's need for the proposed use. Kracower opined that there was no demonstrated need for additional residential units in the Village, especially in light of the suggestion in the Village's 2006 master plan calling for another retail use on the subject property. MaRous testified that neither the Village nor the owner had conducted a feasibility study regarding the impact of adding additional residential units to the Village's inventory. MaRous believed that there was a minimal demand for condominium units priced at $500,000 to $700,000 per unit within the Village. Van Zandt opined that there was a need for the proposed development because, when he and his wife decided to downsize their home after 39 years of residency within the Village, they were unable to find anything like the proposed development.

¶ 36 The final *LaSalle*/*Sinclair* factor concerns the care with which a community has undertaken in planning its land use development. Kracower testified that the Village's Zoning Ordinance and its comprehensive plan both demonstrated a high level of planning for land use development. Kracower further opined that the identification of the subject property as a transitional use from the residential portion of the Village to the downtown retail business district represented a high level of planning. Kracower also highlighted the treatment of the subject property in the Village's 2006 comprehensive plan, in which the subject property was portrayed as having about a 4,000-square-foot buildable footprint on which to place a mixed-use retail structure utilizing the transitional-use setbacks for the front, side, and rear yards prescribed in the Zoning Ordinance. Pointner opined that the Village had undertaken thoroughgoing care in bringing the proposed development from an initial concept to the approved proposal which garnered the unanimous support of all of the various reviewing committees and the ultimate approval of the Village board, albeit his opinion did not precisely correlate with the seventh and

eighth *LaSalle*/*Sinclair* factors.

¶ 37 The remaining issue at trial concerned the Village's compliance with its own ordinances in approving the proposed PUD development on the subject property. We note that plaintiffs engage in an extended argumentative presentation of the testimony touching on these issues from the trial, but defendants have not complained or otherwise moved to strike the argument from plaintiffs' statement of facts. Illinois Supreme Court Rule 341(h)(6) (eff. Feb. 13, 2006), requires a party to provide a fair and accurate statement of facts without interposing comment or argument therein. A noncompliant statement of facts may be stricken by the reviewing court and, if sufficiently egregious, the appeal may be dismissed. *Szczesniak v. CJC Auto Parts, Inc.*, 2014 IL App (2d) 130636, ¶ 8. Plaintiffs' inclusion of argument in the statement of facts may be separated from the factual recitation and it does not otherwise hinder our review. Accordingly, we need not resort to the harsh sanction striking the statement of facts or dismissing the appeal; we will simply disregard the objectionable portions in plaintiffs' statement of facts. *Id.*

¶ 38 Returning to the issue of whether the Village complied with its own ordinances, plaintiffs challenged the Village's approval of the proposed PUD and its implicit interpretation of the transitional use setback and buffer requirements in the Zoning Ordinance. Kracower testified that, under his reading of section 20.4.11.D(1)(a) (Village of Clarendon Hills Zoning Ordinance § 20.4.11.D(1)(a) (eff. Sept. 30, 2006)), he believed that the ordinance called for 33-foot setbacks along Prospect and Park Avenues, and a 25-foot setback along the real lot line abutting the R-1 zoning district. Kracower testified that, contrary to his understanding of the ordinance, the proposed development had no setbacks along either Prospect or Park Avenues. Kracower calculated that the maximum footprint of a building to be built on the subject property, accounting for the transitional use setbacks prescribed in section 20.4.11.D, was about 4,000

square feet; however, the footprint of the proposed development was about 10,000 square feet.

¶ 39 Kracower also testified that the proposed development was required to install landscape screening along the entire length of the south lot line adjacent to the R-1 zoning district. Kracower testified that approval did not include the required landscape screening.

¶ 40 The Village witnesses agreed that the subject property was a transitional use under the Zoning Ordinance. They, however, disputed Kracower's reading of the relevant provisions regarding transitional use setbacks, concluding that only the rear yard was subject to the 25-foot setback requirement. In Ungerleider's reading of the ordinance, the setback requirement was applicable only to a yard directly bordering the R-1 district, and the rear yard of the proposed development correctly observed the 25-foot setback requirement.

¶ 41 Plaintiffs also challenged the Village's compliance with the requirements regarding PUDs. Kracower testified that the proposed development was inconsistent with the underlying zoning of the subject property because there were no plans to include first-floor retail. Kracower also criticized the proposed development because it did not include a mixture of uses, contrary to PUD provisions in the Zoning Ordinance (see Village of Clarendon Hills Zoning Ordinance § 20.14.1 (eff. April 4, 1993) (the PUD is supposed to allow "uses mixtures that would not be possible" under the straight application of the other zoning provisions)). Kracower denigrated the proposed development as providing nothing creative or imaginative in solving the difficulties posed by the subject property—the proposed development was a single-use residential condominium building.

¶ 42 Kracower testified that 88 Park had not submitted some of the required documentation. Specifically, a tax impact analysis was not properly completed and a traffic impact analysis was not submitted. Defendants maintained that they relied on a previous traffic study completed and

submitted in relation to a previous, failed development proposed for the subject property.

¶ 43 Kracower also testified that, procedurally, the proposed development had not met several of the necessary standards that must be fulfilled in order to achieve approval. Kracower testified that the proposed development did not conform to the intent and spirit of the Village's comprehensive plan because it violated the prohibition against first-floor residential uses in the B-1 zoning district and did not comply with his reading of the provisions regarding transitional use properties. Kracower also noted that the proposed development did not include allocations of open space; defendants, however, noted that the developer had made monetary allocations in lieu of open-space dedications. Kracower criticized the landscaping of the proposed development because it was not located on site. He also opined that no tangible benefits to the Village arose from the proposed development. Ungerleider testified that the provision of a water main loop along Park Avenue as a condition of approval constituted a benefit, because it supplied water to the retail properties to the north, thereby allowing economically feasible improvements that were prevented by the cost of tapping into the existing water main. Moreover, Ungerleider opined that the proposed development was fully compliant with the requirements in the Zoning Ordinance and fulfilled the spirit of the Village's current master plan.

¶ 44 On November 18, 2015, the trial court issued its decision. Regarding the plaintiffs' contentions against the challenged ordinance, the trial court held:

> "The Court[,] after considering all of the factors in determining the validity of a zoning ordinance, as set forth in *LaSalle*/*Sinclair*, and analyzing and weighing the evidence admitted at Trial in relation to those factors, finds that the Plaintiffs have failed to establish by clear and convincing evidence that the ordinance as applied to the property in question is arbitrary, unreasonable and without any substantial relation to the health,

safety, comfort, morals or general welfare of the public."

¶ 45 Regarding the Village's compliance with its own standards and ordinances, the trial court first considered the claim that the proposed development did not adhere to the setbacks required for a transitional use:

> "[C]ertain setbacks are required for transitional property. However, in this case[,] both parties agreed that the Exceptions set forth in [section 20.4.11.D(2) (Village of Clarendon Hills Zoning Ordinance § 20.4.11.D(2) (eff. Sept. 30 2006))] apply. Generally, in a B-1 Business District, *** which is the zoning for the subject property, there is no setback required for [the] front yard or [the] corner side yard ***. Section [20.4.11.D(2)] provides that '[***] Furthermore, a property in the B-1 retail business district [***] shall only be required to provide a transitional use setback, as set for in subsection D(1)(a) of this section [(Village of Clarendon Hills Zoning Ordinance § 20.4.11.D(1)(a) (eff. Sept. 27, 2010))], where the rear or interior side lot line of the B-1 [***] zoned property directly adjoins a property zoned for residential use.' Here the only area of the subject property that adjoins a property zoned for residential use is the rear yard, where the required setback is provided. That is the only setback required in this situation for the subject property. The Court finds that Plaintiff's [*sic*] position and their expert's opinion misread this section and therefore, the Village has complied with this regulation."

¶ 46 The trial court next turned to whether allowing a residential used on the first floor of the proposed development violated the Zoning Ordinance. The court held:

> "A PUD is a permitted use in a B-1 district. Therefore, the Village could reasonabl[y] interpret this section, under a PUD, to allow residential uses on the first floor. This would be a legislative function of the Village Board in interpreting its ordinance which is

due deference from the Court. Especially since zoning is mainly a legislative function."

¶ 47 Considering whether the proposed development violated the Village's master plan, the trial court first noted that the Village had amended its master plan in Village of Clarendon Hills Ordinance No. 13-10-31 (eff. October 31, 2013). The amended master plan specifically addressed the subject property: "The [amended master plan] shows redevelopment of the [subject property] with a multiple story mixed use or residential-only building capable of accommodating parking on-site and providing a sensitive transition to the single-family homes to the south." The legend on the map of the amended master plan effectively repeated in summary the foregoing passage: "[d]evelop a multiple-story mixed use or residential-only building capable of accommodating parking on-site and providing a sensitive transition to the single-family homes to the south." Based on these amendments, the court held:

> "Therefore, under the revised Comprehensive Plan, the development is no longer in conflict with its provisions. Again, this was done by legislative action by the Village Board, which is clearly within their ability to develop a Comprehensive plan for the Village, which they feel is in the best interest of the Village. No conflict with the Comprehensive Plan exists as of the passage of the Ordinance allowing the PUD. The Court will note, that except for retail missing from the first floor, it is less dense and has less height than the prior PUD approved for the same property. In addition, the proposed PUD will be in conformity with the comprehensive plan of the Village and meets the relationship and compatibility of the proposed plan test to the adjacent properties and neighborhood as expressed in the comprehensive plan. *** In an overview, it seems to fit as a transition area between all the various zoning districts. It also seems to fit the use of the property since it lies in the fringe area of the business district and is less than .4

> acres and is irregularly shaped and is within a block or block and a half of a[n] R-1 and R-4 District."

¶ 48 Next, the trial court considered plaintiffs' contentions that the Village did not submit documentation required in the PUD provisions of the Zoning Ordinance (see Village of Clarendon Hills Zoning Ordinance § 20.14.1 *et seq.* (eff. April 4, 1993)). The court held:

> "the Court will note that a prior PUD was approved for this property which had a more intensive use tha[n] the one approved in this development. The Village Board could find, that based on the approval of the prior PUD, it was not necessary to have the developer submit the documents set forth in these provisions. As Defendants[']expert testified to, and the Court finds credible, that the Master Plan contained a chart to calculate the traffic impact for this development. As for the Tax Impact and School Impact analysis, the Court finds that since the development contains only 8 Condominium units that the School impact is at best minimal and the Tax impact could be determined based on the testimony provided at the various hearings held and as testified to at trial."

¶ 49 The trial court then considered whether defendants complied with the standards necessary to secure the grant of a special use (see Village of Clarendon Hills Zoning Ordinance § 20.15.2.D (eff. April 4, 1993)). The court held that plaintiffs failed to carry their burden of proving their case; instead, the court held that the evidence presented at trial was evenly balanced.

¶ 50 The trial court also considered whether either party had demonstrated that the proposed development either did or did not provide tangible benefits to the community (see Village of Clarendon Hills Zoning Ordinance § 20.14.3.B(15) (eff. April 4, 1993)). The court held that:

> "the testimony consisted of the experts arguing over the provision of tangible benefits to

> the neighborhood or community in which it is located, and the benefit, aesthetics, quality and quantity of such benefits. They largely disagreed in their opinions as to whether any tangible benefits were given. While this is a factual determination, it also contains a component of subjective evaluation by the Village in determining the value, impact and benefit to the neighborhood or community in which it is located. The Village is allowed discretion in evaluating the proposed tangible benefits which may be derived by the development to the Village. The Court finds that the provision of the water main, which was not required if retail spaces were provided on the first floor, certainly provided a tangible benefit to the business district by enhancing the provision of water to the area for further development. The Court notes there was a recapture agreement with the developer, but no specifics or any information about the details were presented in evidence which would lead the Court to conclude otherwise than tangible benefits were provided to the community. In addition, the streetscape improvements, the liability of the developer to maintain the landscaping on the right of way did provide tangible benefits to the Village, which were otherwise not required to develop the property under B-1. The Village, using its discretion and interpretation of the regulations, found the benefits to be adequate."

The court concluded that the Village:

> "could allow the PUD to be permitted to depart from strict conformance with the required density, dimension, area, height, bulk, use and specific content regulations of the underlying zoning district based on what the Village found to be tangible benefits to the community. In addition, there is evidence in the record which supports a decision by the Village to find there are tangible benefits to the Community. Individuals may disagree as

to the amount and quality of the benefits, but it is clear that the Village could find tangible benefits to the community based on its review of the proposed development."

¶ 51 Finally, the trial court considered the issue of whether strict or substantial compliance with its ordinances was required. After reviewing the language of the provisions, the court held:

"Here, the Court finds that the Village did in fact achieve the purpose without strict compliance with the Ordinance. The record is clear that the Village was charged with holding hearings and receiving recommendations from the public regarding the PUD and it proposed development of a land-use plan for the subject property. The Village held numerous public meetings and received input from the Zoning Board of Appeals/Plan Commission of the Village and the Downtown Design Review Commission, who both unanimously recommended approval of the PUD. *** Using the recommendations provided by these groups, the Village's attorneys, consultants, and staff prepared a tentative report and a proposed zoning ordinance for the project. *** The Village then passed the [challenged ordinance] on October 21, 2013. *** In addition, the Village exercised its legislative discretion and made certain findings required by the zoning ordinance. *** While all of the actions required by the statute were performed, they were not strictly performed under the ordinance. However, [section 20.14.3.B(15) of the Zoning Ordinance (Village of Clarendon Hills Zoning Ordinance § 20.14.3.B(15) (eff. April 4, 1993))] allows the Village as noted above to depart from strict conformance with the required density, dimension, area, height, bulk, use and specific content regulations of the underlying zoning district. However, the Court finds the Village complied with the function of all the requirements of the [ordinance] because the Village gave notice to and spent considerable time involving the public in the process of adopting the new

> ordinance, got recommendation[s] from various commissions and decided under the [ordinance] to depart from strict conformance with the required density, dimension, area, height, bulk, use and specific content regulations of the underlying zoning districts and therefore fulfilled the intent of the legislature and the ordinance. The missing reports may not have been required due to the fact that a prior PUD, which had a more impactful and denser building, use and higher traffic patterns, was already approved by the Village for the subject property. No persuasive evidence was presented as to why, after the prior approval of the other PUD, that these reports would have served any useful purpose for the Village to consider in its approval.
>
> Second, the Court turns to whether Plaintiffs were prejudiced by the Village's failure to strictly comply with the [ordinance]. There is no support in the record that Plaintiffs were in any way prejudiced by the fact that the Village did [not] strictly comply with the procedures in order to satisfy all of the requirements of the [ordinance]. Despite not being done in precise conformity with the statutory requirements, all of the requirements under the [ordinance] were in-fact [*sic*] met by the Village here."

¶ 52 The trial court thus entered judgment in favor of defendants and against plaintiffs on both counts I and II. Plaintiffs timely appeal.

¶ 53 II. ANALYSIS

¶ 54 On appeal, plaintiffs contend that the trial court erred when it dismissed count III of the amended complaint, which alleged that, pursuant to section 20.14.2.C(8) of the Zoning Ordinance (Village of Clarendon Hills Zoning Ordinance § 20.14.2.C(8) (eff. Sept. 27, 2010)), 88 Park Avenue's preliminary PUD approval had lapsed before the developer received the final approval or the Village granted the developer an extension. Plaintiffs also contend that the

challenged ordinance was arbitrary and unreasonable in light of the *LaSalle*/*Sinclair* factors. Finally, plaintiffs argue that trial court erred in determining that the Village complied with the requirements set forth in its ordinances. We consider each contention in turn.

¶ 55 A. Limitations Period for Preliminary PUD Approval

¶ 56 Plaintiffs initially argue that the trial court erred in granting defendants' motion to dismiss count III of the first amended complaint, pursuant to section 2-619 of the Code (735 ILCS 5/2-619 (West 2014)). We review *de novo* the trial court's judgment on a section 2-619 motion to dismiss. *Richter v. Prairie Farms Dairy, Inc.*, 2106 IL 119518, ¶ 18.

¶ 57 Section 20.14.2.C(8) provides:

> "For any preliminary PUD approved after September 30, 2010, if the applicant, or its successor, has not filed a complete request for final PUD approval within one year of the preliminary PUD plan approval for the PUD, the preliminary PUD plan approval and the accompanying special use permit shall be null and void, unless an extension of time for the filing of a final PUD plan approval shall have been granted by the village board." Village of Clarendon Hills Zoning Ordinance § 20.14.2.C(8) (eff. October 29, 2013) (preliminary PUD sunset provision).

Plaintiffs argue that, under the terms of the preliminary PUD sunset provision, the developer had one year from the preliminary PUD approval to move the project along to a final PUD approval. If the developer had not filed a complete request for final PUD approval within that year, then the preliminary PUD approval became null and void. On October 21, 2013, the Village passed the challenged ordinance. Plaintiffs argue that the developer had one year from that date, until October 21, 2014, to file a complete request for final PUD approval. Plaintiffs contend that the developer had not, before October 21, 2014, filed either a complete request for final PUD

approval or a request to extend the one-year limitations provision. Plaintiffs argue that, by operation of the preliminary PUD sunset provision, the preliminary PUD approval and the underlying grant of the special use was null and void.

¶ 58 According to plaintiffs, section 20.14.2.C(8) prescribes a "Village-wide requirement" regarding the timeframe in which to move a PUD project forward. Plaintiffs acknowledge that the Village has to power to grant an extension to the one-year time period, but plaintiffs argue that section 20.14.2.C(8) requires that the extension must be granted before the time period expires; plaintiffs further contend that section 20.14.2.C(8) "does not allow the special use permit and the preliminary PUD approval to be resurrected *after* the one-year period has expired." (Emphasis in original.)

¶ 59 Plaintiffs' contention requires that we interpret the Village's Zoning Ordinance. Our primary objective when interpreting an ordinance is to ascertain and give effect to the intent of the legislative body. *Henderson Square Condominium Ass'n v. LAB Townhomes, LLC*, 2015 IL 118139, ¶ 67. The best indication of that intent is the language of the provision, which is given its plain and ordinary meaning. *Id.* If the provision is clear and unambiguous, it will be given effect without resort to other aids of construction. *Id.* We may not read into the provision limitations, exceptions, or conditions not expressed by the legislative body. *Metropolitan Life Insurance Co. v. Hamer*, 2013 IL 114234, ¶ 18.

¶ 60 The preliminary PUD sunset provision allows the Village to grant an extension to the holder of a preliminary PUD approval. The provision contains no language regarding when or how an extension may be granted.

¶ 61 For their part, plaintiffs argue that the provision must be interpreted to require the extension to be granted before the one-year period has lapsed. Plaintiffs do not, however,

explain their reasoning. For example, plaintiffs do not cite interpretive canons or authority to support their position; likewise, plaintiffs do not undertake to analyze the language of the preliminary PUD sunset provision in order to support their argument. While there is certainly logical sense to plaintiffs' contention, the fact that other bodies have promulgated rules that expressly require extensions to be sought before the expiration of the due date suggests that plaintiffs' interpretation is not necessarily mandated in the language of the provision. See, *e.g.*, Ill. S. Ct. R. 306(c)(4) (eff. July 1, 2014) (time limits may be extended "upon notice and motion *** filed before expiration of the original or extended time"); Ill. S. Ct. R. 183 (eff. Feb. 16, 2011) (the trial court "may extend the time for filing any pleading or the doing of any act which is required by the rules to be done within a limited period, either before or after the expiration of the time"). Obviously, the Village did not participate in promulgating the Illinois Supreme Court Rules; nevertheless, they illustrate the ease with which language may be used in a provision to make an express requirement. Such an express requirement is lacking from section 20.14.2.C(8). Thus, plaintiffs are effectively asking that we add a limitation into the preliminary PUD sunset provision. However, we are forbidden to do so. *Hamer*, 2013 IL 114234, ¶ 18.

¶ 62 We also note that plaintiffs do not analyze the ordinance by which the Village granted 88 Park Avenue final PUD approval and the stated reasons for passing it. In passing this ordinance, the Village expressly dealt with the circumstances of extending the time period in which 88 Park Avenue was required to file its complete application for final PUD approval. The Village stated:

> "The Village Board finds that the one (1) year period for the filing of Final PUD approval, pursuant to Section [20.14.2.C(8)] of the Village Code [(Village of Clarendon Hills Zoning Ordinance § 20.14.2.C(8) (eff. October 29, 2013))], for the Subject Realty was tolled with the filing of the Lawsuit on December 6, 2013[,] by [plaintiffs], thereby

> making [88 Park Avenue's] application for Final PUD approval timely. Alternatively, to the extent the one (1) year period for the filing of Final PUD approval pursuant to section [20.14.2.C(8)] of the Village Code can be construed to not have been tolled with the filing of the Lawsuit, the Village Board hereby waives said one (1) year period in this case because of the uncertainty caused by the Lawsuit, and to the extent that the one (1) year period for the filing of Final PUD approval cannot be waived, an extension of the time period for filing is granted to [88 Park Avenue], through the date on which [88 Park Avenue] filed the application for Final PUD approval with the Village." Clarendon Hills Ordinance No. 15-04-32 (eff. April 21, 2015).

¶ 63 Plaintiffs do not address the issue of tolling. To be fair, neither does the Village, but the Village does not bear the burden of persuasion. Likewise, plaintiffs do not address the issue of the Village's waiver and its effect on the operation of section 20.14.2.C(8). Finally, plaintiffs do not directly address the after-the-fact grant of an extension of time. As we have noted above, section 20.14.2.C(8) does not indicate whether an extension may be granted only before the expiration of the one-year period, or whether it may be granted after, so long as the request is made. By failing to address any of these issues, plaintiffs have forfeited our review. Ill. S. Ct. R. 341(h)(7) (eff. Feb. 6, 2013).

¶ 64 Instead, plaintiffs argue that a non-home-rule municipality must comply with its own zoning regulations. *Geneva Residential Ass'n, Ltd. v. City of Geneva*, 77 Ill. 3d 744, 7751-52 (1979). However, the plaintiffs' attack in *Geneva Residential* was directed at the City's alleged failure to substantially comply "with the procedures required by both city ordinance and State statute." *Id.* at 751. The court reasoned that the City in that case was not a home-rule unit so it could only exercise powers expressly delegated by the General Assembly or powers arising by

necessary implication from the expressly delegated powers. *Id.* The court examined the plaintiffs' complaint and determined that it had adequately alleged that the City had not complied with its comprehensive zoning ordinance and the Municipal Code. *Id.* at 752.

¶ 65 Here, plaintiffs argue only that the Village did not follow the requirements of section 20.14.2.C(8) of the Zoning Ordinance without further arguing that the Village was also not following a statutory requirement. In the absence of such an argument, plaintiffs' reliance on *Geneva Residential* is misplaced.

¶ 66 We note that, as a general rule, a court will not overrule a municipality's zoning enactment based on the municipality's purported failure to follow self-imposed requirements. *Central Transport Inc. v. Village of Hillside*, 210 Ill. App. 3d 499, 510 (1991) (citing *Landmarks Preservation Council v. City of Chicago*, 125 Ill. 2d 164, 179 (1988)). In *Central Transport*, the court refused to disturb the plaintiff's right to a special use, holding that all statutorily mandated procedural requirements were satisfied and the contention that the Village of Hillside had not followed its own rules could not result in overturning the special use. *Id.* at 511. Here, plaintiffs have not argued that the Village did not follow statutory procedural requirements, only that the Village did not follow the "requirements" of section 20.14.2.C(8). Pursuant to *Central Transport*, we cannot entertain this argument.[2] *Id.* at 510-11.

¶ 67 Plaintiffs argue that it is unclear whether *Central Transport*, and the authority on which it relies, applies to non-home-rule municipalities. We disagree. The analysis in *Central Transport*

[2] We further note that plaintiffs have forfeited any claim that the Village did not fulfill the procedural requirements set forth in the Municipal Code. Ill. S. Ct. R. 341(h)(7) (eff. Feb. 6, 2013).

clearly indicated that the challenged special use had complied with statutory requirements even if it did not comply with the Village of Hillside's own self-imposed procedural requirements. Thus, it can be inferred that, as in *Geneva Residential*, the Village of Hillside, by needing to comply with statutory requirements, was a non-home-rule municipality. Accordingly, we reject plaintiffs' attempt to distinguish *Central Transport* on that basis. Further, we believe that *Central Transport* fully applies here.

¶ 68 We also note that it is not clear whether the Village did not follow its own procedures for granting a final PUD approval. As we noted above, the preliminary PUD sunset provision does not contain language, although it easily could, limiting the timeframe in which to seek an extension. Because the provision does not prohibit an after-the-fact extension, we cannot say that the Village did not follow its own procedures (and we cannot read such a limitation into the provision).

¶ 69 Plaintiffs argue that, rather than *Central Transport*, we should instead follow *Geneva Residential Ass'n v. City of Geneva*, 100 Ill. App. 3d 413, 416-18 (1981) (*Geneva Residential II*). We disagree. In *Geneva Residential II*, the court held that the evidence presented at the trial following its decision in *Geneva Residential* did not sufficiently show that the City had complied with the Municipal Code. *Id.* at 417. Here, plaintiffs simply did not argue that any failure to follow (if there in fact was a failure to follow as discussed above) the Village's self-imposed procedures also violated statutory requirements. Thus, *Geneva Residential II* remains distinguishable for the same reasons that *Geneva Residential* was distinguishable.

¶ 70 Accordingly, for the reasons expressed above, we reject plaintiffs' contentions that the trial court erred in dismissing count III. The plain language of the preliminary PUD sunset provision does not include a temporal requirement to the granting of an extension of time to the

one-year sunset period. The Village granted 88 Park Avenue an extension in Ordinance No. 15-04-32. Plaintiffs' failed to demonstrate any error in the trial court's decision. Accordingly, we hold that the trial court properly dismissed count III of the first amended complaint.

¶ 71 B. Compliance with the *LaSalle*/*Sinclair* Factors

¶ 72 Plaintiffs next contend that the trial court erred in determining that the challenged ordinance complied with the *LaSalle*/*Sinclair* factors. To put it another way, plaintiffs argue that the challenged ordinance was arbitrary and unreasonable and bore no substantial relation to public safety, health, morals, or welfare. In order to make out such a contention, the party challenging the ordinance must prove it by clear and convincing evidence. *Twigg v. County of Will*, 255 Ill. App. 3d 490, 493 (1994). We review the trial court's determination and will disturb it only if it is against the manifest weight of the evidence. *Id.*[3]

¶ 73 The *LaSalle*/*Sinclair* factors evolved as a useful way to review the effect of an ordinance as applied to a specific property. *Napleton*, 374 Ill. App. 3d at 1109. Thus, the trial court's determination that the challenged ordinance complied with the *LaSalle*/*Sinclair* factors is simply an expression that the ordinance at issue was not unreasonable or arbitrary and that it bore a

[3] Plaintiffs contend that the trial court did not make any specific factual determinations regarding the *LaSalle*/*Sinclair* factors but only held that the challenged ordinance was valid under an application of the *LaSalle*/*Sinclair* factors, so that we ought not to give any deference to the determination. We disagree. While there are no specific factual findings, we may nevertheless determine whether a finding favoring defendants regarding each individual factor would be against the manifest weight of the evidence.

relation to the public well being. With this understanding in mind, we turn to plaintiffs' contentions regarding the *LaSalle*/*Sinclair* factors.

¶ 74 Plaintiffs initially argue that the preliminary PUD approval is inconsistent with the surrounding zoning, uses, and character of the neighborhood. This first *LaSalle*/*Sinclair* factor is considered to be the most important factor in the analysis, although no single factor is controlling. *La Grange State Bank v. County of Cook*, 75 Ill. 2d 301, 308-09 (1979). To assess this factor, a court will examine both the existing uses and the existing zoning of nearby property. *Id.* at 309.

¶ 75 The subject property is zoned B-1. It is physically separated from the downtown business district by two of the Village's main streets. The uses at the intersection of Prospect and Park Avenues consist of restaurants and an insurance agency. To the south and east of the subject property are single-family residences located in an R-1 zoning district. To the north and west of the subject property is the downtown retail business district, which consists of retail and restaurant uses and a bank. The downtown is zoned B-1, the same zoning underlying the subject property.

¶ 76 The Village's downtown master plan and its comprehensive plan both identify the subject property as a transitional use. The original downtown master plan suggested that first-floor retail with upper-floor residential would be an appropriate use; the master plan was amended to suggest that a denser residential use might act as an appropriate transition from the single-family residential uses into the downtown retail uses.

¶ 77 The subject property has been granted a PUD, and a PUD is a permitted use as of right in a B-1 zoning district. The proposed development physically conforms to that permitted in the underlying B-1 zoning district: the proposed building extends to the front and side lot lines (it is

on a triangularly shaped parcel) along Prospect and Park Avenues. Thus, the physical character of the proposed development appears consistent with the retail uses into which the subject property transitions. Further, the high-density residential use is denominated an appropriate transition in the Village's amended master plan. Accordingly, we cannot say that a determination that this factor favors defendants is against the manifest weight of the evidence.

¶ 78 Plaintiffs argue that the proposed development is the proverbial sore thumb, sticking out from the surrounding uses. According to plaintiff, the lack of a first-floor retail use differentiates it from the nearby retail uses in the B-1 zoning district, and the high-density residential use differentiates it from the nearby single-family homes in the R-1 zoning district. Plaintiffs overlook, however, that this is a PUD, and a PUD is a permitted use as of right in the B-1 zoning district. Further, the Village identified this type of development as an appropriate transition in its updated downtown master plan. Additionally, the proposed development adopts the physical characteristics of the B-1-zoned properties nearby. Therefore, it is physically and visually not inharmonious with the zoning district into which it transitions. Accordingly, while we acknowledge plaintiffs' argument, we do not find it sufficiently persuasive to alter our conclusion.

¶ 79 Plaintiffs contend that the proposed development represents an example of prohibited "spot zoning." We disagree. The subject property was granted a PUD, and thus, it is not an example of "spot zoning." Further, as noted above, the proposed development attempts to provide the Village with the desired transition from an R-1 zoning district into the downtown business district. For these reasons, we reject plaintiffs' claim.

¶ 80 Plaintiffs also argue that the proposed development is a "hulk" of a building, outbulking its residential neighbors and out of place in a residential neighborhood. Again, we acknowledge

plaintiffs' point. However, the property is transitional. The high-density residential use is suggested by the updated master plan, and the building's physical characteristics conform to the B-1 zoning district. Could the proposed development perhaps have adopted R-1 zoning district setbacks and mass and bulk restrictions? Certainly. The choice actually adopted is also abundantly possible. Simply because plaintiffs' esthetic sensibilities are offended, however, does not mean that the proposed development is rendered inappropriate; rather, it is a choice adopted by the Village, and we cannot say the possibility for a different choice means the choice actually made by the Village is necessarily improper. Again, while we understand plaintiffs' contention, we do not accept it. Accordingly, we cannot say that a determination that the first and most important *LaSalle*/*Sinclair* factor favors defendants is against the manifest weight of the evidence.

¶ 81 Regarding the second factor, the diminution of property values due to the proposed development, plaintiffs argue that this factor is obviously in their favor and that they demonstrated the proposed development would cause a diminution in the values of both the retail and residential properties. The individual plaintiffs both testified that proposed development would negatively impact the values of their properties: Altvater, a real estate broker, testified that he saw a diminution of a few percent in recent nearby residential sales while Hanlon testified that taking away the retail use from a gateway into the downtown retail business district would disrupt the reliance of the downtown businesses upon each other and negatively impact all of the downtown businesses. MaRous, plaintiffs' appraiser, testified that the entry of a nonretail use into the Village's downtown retail business district would decrease the value of the properties in that area, but he did not quantify the amount of diminution he expected to see. On the other hand, Kleszynski, defendants' appraiser, testified that he could see no negative effect resulting

from the proposed development. Kleszynski examined "competing" municipalities and opined that, as they had suffered no negative effects from high-density-residential developments near the downtowns, a similar result would be experienced by the Village. However, Kleszynski was unable to identify any specific communities that allowed a nonresidential use to enter the downtown retail business district as was proposed in the Village. Pointner, defendants' planner, testified that the proposed development was actually not part of the downtown retail business district because it was separated by major roads from the business district. (See *Glenview State Bank v. Village of Deerfield*, 213 Ill. App. 3d 747, 761 (1991) (streets provide reasonable demarcations between different uses).)

¶ 82 The evidence was conflicting, but the parties supported their positions with reasonable evidence. The trial court was in the best position to observe the witnesses and draw conclusions from the testimony. *Nelson v. County of De Kalb*, 363 Ill. App. 3d 206, 210-11 (2005). Accordingly, we cannot say that a finding that this factor favored defendants was against the manifest weight of the evidence.

¶ 83 The next factors involve the weighing of the gain to the public compared to the diminution of property values and compared to the hardship on the property owner. If there is a minimal negative impact to the property values, then, correspondingly, it takes little in the way of enhancement to the public welfare to justify the restriction. *Id.* at 211.

¶ 84 Plaintiffs argue that the Village failed to show any appreciable gain to the public. This argument is backwards. The burden is on plaintiff to demonstrate, by clear and convincing evidence, that the proposed development and zoning restrictions were arbitrary and unreasonable. *Twigg*, 255 Ill. App. 3d at 493. It is plaintiffs, not the Village and not 88 Park

Avenue, who must show that the benefits to the public are insubstantial or outweighed by the detriment to the public and the property owner. See *id.*

¶ 85 Here, the Village opined that that a major benefit to the public was the new water main connection that would allow for easier and more effective development of properties in the downtown area. Plaintiffs argue that the Village did not show that the water main improvement would not have been required under any other development of the subject property. Again, as we noted, this is backwards; the burden was on plaintiffs to make that showing. With that said, plaintiffs contradicted all of the benefits identified by defendants. However, as noted in the previous factor, the trial court's implicit finding that there would be little to no diminution in the value of the nearby properties cannot be said to be against the manifest weight of the evidence. The fact that the Village identified reasonable benefits to the public even though plaintiffs challenged those benefits does not mean they do not exist. The trial court was in the best position to evaluate the testimony of the witnesses and to accord their testimony the appropriate weight. *Nelson*, 363 Ill. App. 3d at 210-11. We cannot say that a determination that the relative gain to the public compared to the impact on property values favored defendants was against the manifest weight of the evidence.

¶ 86 The next factor considers the suitability of the subject property for the zoned purpose. Plaintiffs argue that neither the zoning nor the proposed building is suitable. According to plaintiffs, the zoning is effectively R-4 with none of the setbacks and other restrictions, and the building is effectively a B-1-type building with prohibited uses. Plaintiffs conclude that this results in this factor strongly favoring them. We disagree.

¶ 87 We first note that the underlying zoning is the B-1 zoning district, which allows for the type of building conceived for the proposed development. Further, a PUD is a use permitted as a

matter of right in the B-1 zoning district. Finally, the Village's updated downtown master plan envisions a high-density residential use for the subject property as an appropriate transitional use from the R-1 residential zoning and uses to the south and east into the downtown retail business district to the north and west of the subject property. Based on these considerations, we cannot say that a conclusion that the subject property was suitable for the proposed zoning and development was against the manifest weight of the evidence.

¶ 88 Next, we consider the length of time the property has remained vacant. Plaintiffs argue that the economic downturn experienced in the recent past should be given considerable weight in analyzing this factor. According to plaintiffs, this means that the subject property, while vacant from 2006, should not be considered to have been vacant for the seven years before the preliminary PUD approval because no development was going on in the area during the economic downturn. Defendants argue, on the other hand, that the property has remained vacant from 2006 until the present day, a relatively lengthy period of time. Defendants also note that a previous mixed-use residential development failed, indicating that some other approach was warranted. See *Bossman v. Village of Riverton*, 291 Ill. App. 3d 769, 779-80 (1997) (for this factor to be significant, the vacancy must be attributed to improper zoning, and not simply to a lack of attempts to develop or some other reason unrelated to the zoning). Here, plaintiffs seem to have the better of the argument. The vacancy persisted because of the economic downturn; however, the fact that a previous development of the type plaintiffs are advocating failed is also significant and suggests that the vacancy may have been due to the zoning and not simply unfavorable economic circumstances making development difficult to impossible. Accordingly, we cannot say that a determination that this factor favored defendants was against the manifest weight of the evidence. Even if we disagreed and determined that this factor should have shaded

in favor of plaintiffs, in light of the all of the other factors, it would be insufficient to disturb our overall view of the trial court's determination.

¶ 89 The next factor is the care with which the community planned for development of the subject property. Both parties agree that the Village undertook significant care in planning for the development of the downtown district, including the subject property. Plaintiffs argue that the proposed development is anomalous and out of character with respect to that planning, as it abandons the first-floor retail uses in the rest of the downtown retail business district. Defendants note that the updated master plan suggests that the precise sort of development as proposed for the subject property would be an appropriate use for the subject property and a good transition from the residential uses bordering the downtown district into the downtown district. We have dealt with plaintiffs contentions above. While the parties each have reasonable arguments, the trial court was in the best position to weigh the evidence presented. Accordingly, we cannot say that a determination that this factor favored defendants was against the manifest weight of the evidence.

¶ 90 Finally, we consider the factor regarding the community's need for the proposed use. Plaintiffs argue that the Village failed to prove a need for the proposed development. As before, we note that this argument is backwards: plaintiffs had the burden to demonstrate that the challenged ordinance was unreasonable and arbitrary. *Twigg*, 255 Ill. App. 3d at 493. With that said, the Village presented evidence that the master plan called for a high-density residential use on the subject property. Kleszynski also testified that the Village lacked similarly priced "high quality" condominium developments; likewise, Van Zandt testified that there were no other condominiums of comparable quality to those he proposed to develop on the subject property.

Based on this evidence, we cannot say that a determination that this factor favored defendants was against the manifest weight of the evidence.

¶ 91 In summary, we have determined that the trial court could have reasonably interpreted the evidence in each of the *LaSalle*/*Sinclair* factors to favor defendants. Accordingly, we cannot say that the trial court's holding that, based on a consideration of the *LaSalle*/*Sinclair* factors, plaintiffs failed to establish by clear and convincing evidence that the challenged ordinance was unreasonable and arbitrary and without substantial relation to public welfare as applied to plaintiffs was against the manifest weight of the evidence.

¶ 92 C. The Village's Compliance with Its Ordinances

¶ 93 For their last issue on appeal, plaintiffs contend that the Village failed to comply with its own ordinances in approving the proposed development for the subject property. Specifically, plaintiffs argue that the Village misinterpreted the transitional-use setback requirements of section 20.4.11.D (Village of Clarendon Hills Zoning Ordinance § 20.4.11.D (eff. Sept. 30, 2006)) and did not comply with certain of the standards applying to PUDs (Village of Clarendon Hills Zoning Ordinance § 20.14.3 (eff. April 4, 1993)).

¶ 94 This issue harks back to plaintiffs' initial argument that the Village did not comply with the procedures set forth in its Zoning Ordinance for granting an extension of time to the preliminary PUD approval. What we said there applies here: a court will not invalidate a legislative body's failure to comply with its own self-imposed procedures where the self-imposed procedures are not required under State (or Federal) law. *Central Transport*, 210 Ill. App. 3d at 510. Plaintiffs do not directly argue that the procedures called for in section 20.14.3 of the Zoning Ordinance are required under the Municipal Code. Accordingly, plaintiffs have forfeited this contention. Ill. S. Ct. R. 341(h)(7) (eff. Feb. 6, 2013).

¶ 95 We note that section 11-13-1.1 of the Municipal Code (65 ILCS 5/11-13-1.1 (West 2014)) requires a community to permit a special use only upon evidence that the special use meets the standards the community has created for the granting of a special use. Additionally, section 11-13-1.1 also states that PUDs may be classified as a special use. *Id.* This would seem to suggest that that the Village may have violated the Municipal Code by failing to comply with the standards pertaining to PUDs (although plaintiffs forfeited this argument).

¶ 96 However, section 20.9.2.FF of the Zoning Ordinance (Village of Clarendon Hills Zoning Ordinance § 20.9.2.FF (eff. June 6, 2006)) lists PUDs as permitted uses in the B-1 zoning district. This means that that a PUD is a permitted use as of right, and not a special use under the Village's Zoning Ordinance. Accordingly, because it is not a special use, section 11-13-1.1 of the Municipal Code, which applies to special uses, does not apply here. Therefore, even if the Village did not follow section 20.4.11.D of the Zoning Ordinance for calculating the setbacks required for the proposed development and certain of the standards set forth in section 20.14.3 of the Zoning Ordinance applicable to the grant of a PUD, they do not run afoul of the Municipal Code, and we cannot entertain these issues under *Central Transport*, 210 Ill. App. 3d at 510. As a result, the trial court did not err in entering judgment in favor of defendants and against plaintiffs on count II of the first amended complaint alleging the Village's noncompliance with the identified portions of its Zoning Ordinance.

¶ 97 III. CONCLUSION

¶ 98 For the foregoing reasons, the judgment of the circuit court of Du Page County is affirmed.

¶ 99 Affirmed.