2013 IL App (2d) 120480-U
No. 2-12-0480
Order Filed February 6, 2013
Modified Upon Denial of Rehearing March 29, 2013

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

BARBARA RUISARD, JEFF REBER, JENNIFER and BILL DILLARD, KAREN, and FORREST DEAN, KRISTIN and JAMES RISNER, and SUSAN and JEROME ZYBKO,	)	Appeal from the Circuit Court of Du Page County.
Plaintiffs-Appellants,	)	
v.	)	No. 08-CH-2550
THE VILLAGE OF GLEN ELLYN, T-MOBILE CENTRAL LLC, and T-MOBILE USA, INC.,	)	Honorable Bonnie M. Wheaton,
Defendants-Appellees.	)	Judge, Presiding.

JUSTICE SPENCE delivered the judgment of the court.
Justices Hutchinson and Birkett concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court properly found that defendants had not violated a Village ordinance and that plaintiffs were not entitled to a declaratory judgment, injunctive relief, attorney fees, or fines. Therefore, we affirmed the court's judgment against plaintiffs and in favor of defendants on counts IV, V, and VI of plaintiff's second amended complaint.

¶ 2 Plaintiffs, Barbara Ruisard, Jeff Reber, Jennifer and Bill Dillard, Karen and Forrest Dean, Kristin and James Risner, and Susan and Jerome Zybko, are residents of Glen Ellyn who opposed the addition of cell phone antennae to the Glen Ellyn water tower. Plaintiffs' pleadings, which culminated in a six-count, second amended complaint, alleged violations of two ordinances passed by the Village of Glen Ellyn (Village). Defendants, the Village, T-Mobile Central LLC, and T-Mobile USA, Inc. (T-Mobile), moved to dismiss plaintiffs' second amended complaint, and the trial court granted this motion. Plaintiffs appealed the dismissal of their second amended complaint. In a published opinion, this court affirmed the dismissal of counts I, II, and III, but reversed the dismissal of counts IV, V, and VI. See *Ruisard v. Village of Glen Ellyn*, 406 Ill. App. 3d 644, 668-69 (2010). The cause was remanded. Following a bench trial, the trial court ruled against the plaintiffs on counts IV, V, and VI of their second amended complaint. Plaintiffs again appeal, arguing that the trial court erred by: (1) ruling that the passage of a new ordinance mooted some of their claims; (2) ruling that the relocation of Verizon antennae and existence of electrical equipment did not violate an ordinance; (3) denying their request for attorney fees and fines; and (4) denying their request for a declaratory judgment. We affirm.

¶ 3 I. BACKGROUND

¶ 4 We briefly summarize the background related to this appeal. On February 11, 1991, the Village passed ordinance No. 3810, which granted a special-use permit for the construction of a water tower on certain property owned by the Village. Glen Ellyn Ordinance No. 3810 (eff. February 11, 1991). Ordinance No. 3810 provides that this special-use permit is "subject to the following conditions," including the condition that "[a]ntennas on the new tower are to be kept at a minimum."

¶ 5 Sixteen years later, in 2007, there were 13 antennae on the water tower, two of which were Du Page Public Safety Communications (DuComm) safety antennae dedicated to the Village's police and fire departments, and two of which were Verizon antennae. That year, T-Mobile applied for a special-use permit to install nine additional antennae on the water tower. On August 27, 2007, the Village passed ordinance No. 5606, entitled an "Ordinance Granting T-Mobile, Inc. approval of a Special Use Permit to allow the installation of a Cellular Antenna Structure On the Village of Glen Ellyn Water Tower." Glen Ellyn Ordinance No. 5606 (eff. August 27, 2007). Ordinance No. 5606 allows a "7-foot 5-inch cellular antenna structure to be placed on the top of the 125-foot municipal water tower" for a total height of "132 feet 5 inches." Glen Ellyn Ordinance No. 5606 (eff. August 27, 2007).

¶ 6 Nearly one year after the passage of ordinance No. 5606, on July 7, 2008, plaintiffs filed their complaint for injunctive and other relief as well as a motion for a temporary restraining order to prevent the installation of T-Mobile's structure and antennae. Shortly thereafter, plaintiffs filed their first amended complaint on July 24, 2008. The Village and T-Mobile filed individual motions to dismiss under sections 2-615 and 2-619 of the Code of Civil Procedure (Code) (735 ILCS 5/2-615, 2-619 (West 2008)), seeking dismissal under several different theories. The trial court dismissed plaintiffs' first amended complaint in its entirety and then granted them leave to file a second amended complaint. Plaintiffs filed their second amended complaint for injunctive and other relief on May 8, 2009.

¶ 7 A. Second Amended Complaint

¶ 8 Counts I, II, and III of plaintiffs' second amended complaint pertained to the "at a minimum" requirement in ordinance No. 3810, and are not at issue in this appeal. Conversely, counts IV, V,

and VI, pertaining to alleged violations of ordinance No. 5606, are the subject of this appeal. In the "Factual Background" of their second amended complaint, plaintiffs alleged that defendants had violated ordinance No. 5606 in the following three ways.

¶ 9 First, plaintiffs alleged that the relocation of the two DuComm antennae violates ordinance No. 5606. Prior to the installation of T-Mobile's structure and nine antennae, plaintiffs claimed that the only antennae that could be seen from all views were the two DuComm safety antennae. Even so, the original DuComm antennae were much lower and narrower than now. Plaintiffs acknowledged that ordinance No. 5606 permits T-Mobile to relocate the DuComm antennae if necessary to ensure that DuComm maintains an unobstructed signal. However, the ordinance states that "[i]n the event that the DuComm antennas exceed their current height of 140 feet, such relocation will require approval of a Special Use Permit for such purpose." Glen Ellyn Ordinance No. 5606 (eff. August 27, 2007). The DuComm antennae had been relocated onto T-Mobile's structure and exceeded the 140-foot height restriction by approximately 7 feet. Plaintiffs alleged that the Village conceded that defendants would need to seek a new special-use permit because they could not bring the DuComm antennae into compliance with the 140-foot height restriction in ordinance No. 5606. Nevertheless, defendants had not applied for such a special-use permit.

¶ 10 Second, plaintiffs alleged that prior to the installation of T-Mobile's structure and antennae, the two Verizon antennae were barely visible due to their location on the water tower. However, T-Mobile had relocated Verizon's antennae onto its structure, making them "highly visible from all views" and making them exceed the 132.5-foot-height restriction by 2.5 feet. According to plaintiffs, no language in ordinance No. 5606 permits T-Mobile to relocate Verizon's two antennae.

¶ 11 Third, plaintiffs alleged that ordinance No. 5606 requires that "all equipment related to T-Mobile's operation" of its antennae "be wholly contained in and on" the water tower. For this language, plaintiffs relied on T-Mobile's "Narrative Statement," a document included in T-Mobile's application for a special-use permit. The document, which plaintiffs argued is "incorporated" into ordinance No. 5606, states that the "establishment, maintenance and operation of this communications facility will be wholly contained in and on the existing municipal water tank." Plaintiffs argued that, contrary to this requirement, defendants had installed "dangerous high voltage equipment," such as electrical boxes, that are not wholly contained in or on the water tower but on the water tower lot.

¶ 12 In count IV, plaintiffs alleged that they were entitled to injunctive relief and attorney fees based on these three violations pursuant to section 11-13-15 of the Illinois Municipal Code (65 ILCS 5/11-13-15 (West 2008)). According to plaintiffs, they would be "substantially affected" by these violations of ordinance No. 5606 because their property values would decrease and because of the "concern, fear, anxiety, and emotional unrest" they would experience living next to a potential health hazard. In terms of relief, plaintiffs requested the court to enter an order requiring defendants to remove T-Mobile's structure, antennae, and related equipment from the water tower.

¶ 13 In count V, plaintiffs alleged that they were entitled to injunctive relief and fines based on the same three violations pursuant to section 10-10-18(B) of the Glen Ellyn Zoning Code (Zoning Code) (Glen Ellyn Zoning Code §10-10-18(B) (amended eff. June 1, 1989)). Plaintiffs alleged that their property values "will or may be affected by" these violations in that their property values would decrease based on the excessive heights of the antennae; the mounting of the Verizon antennae on the structure, making them highly visible and unsightly; and the high voltage electrical equipment

outside the water tower. Similarly, plaintiffs alleged that their use of their properties "will or may be affected" by the excessive heights of the antennae obstructing and interfering with their views and sight lines. Plaintiffs requested the court to enter temporary and permanent injunctions requiring defendants to remove T-Mobile's structure, antennae, and related equipment from the water tower.

¶ 14 In count VI, plaintiffs sought a declaratory judgment against defendants. Based on the three alleged violations of ordinance No. 5606, plaintiffs requested the court to enter an order that T-Mobile had acquired no rights under ordinance No. 5606 to install its antennae on the water tower, and that the licensing agreement between T-Mobile and the Village was a nullity.

¶ 15 Defendants filed a joint motion to dismiss plaintiffs' second amended complaint under sections 2-615 and 2-619 of the Code. The trial court granted this motion with prejudice, and plaintiffs timely appealed. On appeal, this court affirmed the dismissal of counts I, II, and III, but reversed and remanded as to counts IV, V, and VI. See *Ruisard*, 406 Ill. App. 3d at 646. In particular, this court determined that plaintiffs had alleged violations of ordinance No. 5606 that were sufficient to state a cause of action. *Id*. at 667-68.

¶ 16 B. Remand

¶ 17 Upon remand, plaintiffs moved for summary judgment as to count IV of their second amended complaint. In their motion, filed May 27, 2011, plaintiffs alleged that the DuComm antennae exceeded the 140-foot height restriction in ordinance No. 5606, and that no special-use permit had been obtained. Following a hearing on the motion, the trial court denied the motion for summary judgment, stating that it raised questions of fact. The court further indicated that "somebody" needed to file a petition for a special use on this property, and that in the event it was granted, "it looks like we're done."

¶ 18 1. Passage of Ordinance No. 5990

¶ 19 Trial was scheduled for September 28, 2011. Prior to that date, on September 12, 2011, defendants moved to extend the trial date based on the Village's application for a special-use permit allowing the DuComm antennae to exceed the 140-foot height restriction. In December 2011, the Village passed ordinance No. 5990 (Glen Ellyn Ordinance No. 5990 (eff. December 12, 2011)), which allowed the DuComm antennae to exceed the 140-foot height restriction in ordinance No. 5606 by approximately 10 feet.

¶ 20 2. Trial

¶ 21 A two-day bench trial on plaintiffs' second amended complaint occurred on January 25 and January 26, 2012. During their opening statement, plaintiffs argued that they would prove the three violations of ordinance No. 5606 referred to above in counts IV, V, and VI of their second amended complaint. Specifically, plaintiffs argued that they would prove that defendants violated ordinance No. 5606: (1) by failing to obtain a special-use permit *before* mounting the DuComm antennae at a height exceeding 140 feet; (2) by relocating the Verizon antennae and also mounting them in excess of the maximum allowed height of 132.5 feet; and (3) by locating T-Mobile's electrical equipment on the water tower lot as opposed to the water tower itself.

¶ 22 Plaintiffs advised the court that count IV, premised on section 11-13-15 of the Municipal Code, sought injunctive relief and attorney's fees for ordinance violations. Similarly, count V, premised on section 10-10-18(B) of the Zoning Code, sought injunctive relief and weekly fines for ordinance violations. Finally, pursuant to count VI, a declaratory judgment claim, plaintiffs advised the court that they sought declarations that defendants violated ordinance No. 5606 in the three ways described above; that defendants acquired no rights under ordinance No. 5606; and that the lease

agreement between the Village and T-Mobile was a nullity because it was the subject of their unlawful conduct. Finally, plaintiffs asked the trial court to exercise its equitable powers and disgorge the Village of the payments it received from T-Mobile under the lease agreement.

¶ 23 Defendants first responded that the passage of ordinance No. 5990 mooted plaintiffs' argument regarding the DuComm antennae. Second, defendants argued that ordinance No. 5606 was not violated when the Verizon antennae were relocated on top of the T-Mobile structure. This was because a different ordinance, the "Verizon ordinance," places no restrictions as to height or location of the Verizon antennae. Last, defendants argued that ordinance No. 5606 does not require all the electrical equipment to be "wholly in or on" the water tower. Regardless, defendants argued that the electrical equipment challenged by plaintiffs is located on the base of the water tower and is, in fact, attached to it.

¶ 24 At trial, several of the plaintiffs testified in detail as to how they had been "damaged" by the defendants' alleged violations of ordinance No. 5606. Defendants objected to this testimony on the basis that it was irrelevant. Though plaintiffs admitted that the Municipal Code and Zoning Code do not require proof of any specific damage, the trial court allowed this testimony.

¶ 25 Plaintiff Jerome Zybko testified that after the DuComm antennae and Verizon antennae were relocated onto T-Mobile's structure on top of the water tower, he could see them from his backyard and from inside his house. He could also see "some high voltage electrical equipment" toward the base of the water tower on the lot.

¶ 26 Plaintiff Jeffrey Reber offered similar testimony regarding the views of the antennae on top of the water tower and electrical equipment at the base of the water tower from inside his home and his backyard. Reber identified an exhibit showing the electrical equipment at the base of the water

tower. A sign on an equipment box says "Danger High Voltage." Reber had inspected the electrical equipment at the base of the water tower numerous times; it is not "on" or "in" the water tower. Reber testified that vertical, metal poles with brackets (H-frame) hold up the electrical equipment. The metal poles extend down into the ground outside the concrete ring that supports the water tower base. Reber approximated that there is a one-inch separation from the metal poles and the concrete ring supporting the water tower base. Reber admitted that there are horizontal metal pipes attached to the H-frame that extend to the water tower.

¶ 27 The final plaintiff to testify, Karen Dean, testified how her property value and property use, both indoor and outdoor, had been negatively affected by the excessive heights and visibility of the DuComm and Verizon antennae.

¶ 28 Staci Hulseberg, the Village's Director of Planning and Development, testified on behalf of plaintiffs as follows. One of her job responsibilities was ensuring compliance with the Village Code and making "judgment calls" as to whether "things are in compliance or not in compliance." Hulseberg agreed that "Section Three" of ordinance No. 5606 states that "[t]his grant of approval of a Special Use Permit [for T-Mobile's antennae structure] is subject to the following conditions." Paragraph "G" of that section states that "[i]n the event that the DuComm antennas exceed their current height of 140 feet, such relocation will require approval of a Special Use Permit for such purpose." In interpreting ordinance No. 5606, Hulseberg explained that it does not contain a maximum height limitation for the DuComm antennae, which is "something" that cannot be exceeded. Instead, ordinance No. 5606 contains a "condition" that if the DuComm antennae are over a certain height, then a special use permit is required. On the other hand, ordinance No. 5606 does contain a 132.5-feet maximum height limitation for T-Mobile antennae.

¶ 29 Hulseberg testified that as early as December 2007, the Village received T-Mobile's plan and was aware that the DuComm antennae would exceed 140 feet. The DuComm antennae were relocated in July 2008, but no special-use permit was obtained. The parties stipulated that as of August 27, 2008, the heights of the two DuComm antennae were 149.08 feet and 149.78 feet, and, as of September 19, 2008, the heights of the DuComm antennae were 147.36 feet and 146.69 feet.

¶ 30 Hulseberg admitted that in August 2008, neither the DuComm nor T-Mobile antennae were in compliance with ordinance No. 5606. She further admitted that in an email dated November 11, 2008, she advised T-Mobile's representative, Mike Howley, that the antennae exceeded the maximum height permitted in ordinance No. 5606 and thus were "in violation." Though Hulseberg was not sure whether the "antennae" referred to in the email referred to the T-Mobile antennae[1] or the DuComm antennae, she admitted that the DuComm antennae exceeded 140 feet at that time.

¶ 31 Sometime after her November 2008 email to Howley, Hulseberg changed her mind and concluded that there was no violation of ordinance No. 5606. Hulseberg explained that the Village Code contains no height limitations for antennae. Hulseberg believed that because the Village Code requires special-use permits only for antenna structures as opposed to antennae, there was no need to require a special-use permit for the DuComm antennae to exceed 140-feet. According to Hulseberg, there was no need for that requirement in ordinance No. 5606; that sentence "was in error."

¶ 32 Hulseberg then testified regarding Ordinance No. 5990, passed on December 12, 2011, which granted a special-use permit for the DuComm antennae "to remain" on the water tower "at a height

[1]At the time of the email, the T-Mobile antennae exceeded their maximum height requirement of 132.5-feet but then were lowered in compliance.

of just under 150 feet." Ordinance No. 5990 states that the Village "has chosen to voluntarily apply for a Special Use Permit" even though the Village "does not believe that a Special Use Permit is required because the Zoning Code only requires a Special use Permit for antenna support structures, not for antennae."

¶ 33 Hulseberg disagreed that "before" the DuComm antennae could "exceed 140 feet that there [had] to be a special-use permit granted allowing them over 140 feet." Nowhere in paragraph G of Section Three does it say "before." In Hulseberg's opinion, it was "appropriate for those" DuComm antennae "to go up" prior to obtaining a special-use permit.

¶ 34 Hulseberg was questioned in regard to the relocation of the Verizon antennae. Hulseberg agreed that ordinance No. 5606 allows an antenna structure to be placed on top of the water tower "for a total height of 132 feet 5 inches." The parties stipulated that as of August 27, 2008, the heights of the two Verizon antennae were 137.18 feet and 136.84 feet, and, as of September 19, 2008, the heights of the Verizon antennae were 135.08 feet and 134.78 feet. Hulseberg testified that in terms of relocating antennae, ordinance No. 5606 refers only to DuComm antennae; it says nothing about the relocation of Verizon antennae.

¶ 35 With respect to the electrical equipment at the base of the water tower, Hulseberg reviewed photograph exhibits of the area. The photographs showed three electrical boxes that are attached to a metal H-frame that is attached to the water tower. When shown photographs of the vertical poles of the H-frame that go into the ground, Hulseberg admitted that there is a gap "much less than an inch" between the poles and the water tower. However, Hulseberg did not know what happened with the poles below the ground; she could not say that the poles are or are not attached to the water tower.

¶ 36 On cross-examination, Hulseberg disagreed that T-Mobile's electrical equipment has to be "wholly in or on" the water tower. The parties disagreed whether the document relied upon by plaintiffs for this requirement, which was entitled "Standards for Special Use for Wireless Antenna Installation," is incorporated into ordinance No. 5606. The document states in two places that "[t]he establishment, maintenance and operation of this communications facility will be wholly contained in and on the existing municipal water tank." In other places, the document states that the "entire facility" would be "located within or on" or "completely contained within or on" the existing water tank. According to Hulseberg, this document is not included in the list of documents attached to ordinance No. 5606. After the court heard argument on whether the document is part of ordinance No. 5606, it concluded that the document was part of the ordinance.

¶ 37 Though Hulseberg did not believe that the "wholly in or on" requirement existed, she nevertheless believed that T-Mobile's electrical equipment is attached to the water tower. Hulseberg identified an exhibit of T-Mobile's plan showing conduits from the electrical boxes on the H-frame running underground. Another exhibit showed an electrical box inside the water tower. Hulseberg likened the attachment of the electrical equipment at the base of the tower to the antennae on top of the tower. For instance, the antennae are mounted on T-Mobile's metal structure on top of the water tower. Hulseberg considered the antennae attached to the water tower in that they are attached to the metal structure that is attached to the water tower.

¶ 38 Hulseberg discussed the Village's procedure for handling noncompliance with an ordinance. Rather than immediately issuing a citation, the Village would notify the offending party of its belief that something may not be in compliance. If the party refused to comply, the Village would "step up enforcement" by issuing one letter, issuing another letter with a deadline, and eventually issuing

a citation. For example, after the T-Mobile antennae were mounted, they were higher than the approved plan of 132.5 feet. The Village contacted T-Mobile and advised that its antennae were too high and needed to be brought into compliance, which T-Mobile did.

¶ 39 The defense called one witness, Tim Michalik, who worked as a construction manager for T-Mobile in 2008. Michalik supervised the installation of the antennae mounted on T-Mobile's structure on top of the water tower. Though he had not been to the site of this particular water tower, Michalik had acted as a project manager or in a supervisory role on one thousand T-Mobile installations of antennae. Michalik testified that inside the water tower, radio equipment had been installed. Attached to the H-frame at the base of the water tower are three electrical boxes: a utility meter, a power protection cabinet, and an AT&T smart jack. The power protection cabinet contains circuit breakers for a 200-amp service, which is typical of a household current. The metal H-frame at the base of the water tower is connected to the water tower through the conduit.

¶ 40 During closing argument, plaintiffs argued that defendants violated ordinance No. 5606 by failing to obtain a special-use permit *prior to* installing the DuComm antennae at a height greater than 140 feet. Plaintiffs relied on Hulseberg's email in which she stated that the DuComm were "in violation" of ordinance No. 5606. Though defendants obtained a special-use permit allowing the DuComm antennae to remain at their current height via Ordinance No. 5990, defendants' past conduct of not obtaining permission, *i.e.*, a special-use permit, before the DuComm antennae were relocated constituted an ordinance violation. Plaintiffs argued that even if the passage of ordinance No. 5990 mooted their claim for injunctive relief, they were still entitled to attorney fees under section 11-13-15 of the Municipal Code because all they needed to show was that defendants had engaged in the "prohibited activity" of violating an ordinance.

¶ 41 With respect to the Verizon antennae, plaintiffs argued that ordinance No. 5606 places an "overall height restriction" of 132.5 feet "on all objects on the water tower." However, T-Mobile relocated the Verizon antennae onto its structure at heights exceeding the 132.5-feet restriction; it was undisputed that the Verizon antennae had always exceeded 132.5 feet. Plaintiffs further argued that the fact that ordinance No. 5606 provides only for the relocation of the DuComm antennae means that the relocation of the Verizon antennae was "altogether prohibited."

¶ 42 Finally, plaintiffs argued that the electrical equipment is not "wholly or completely contained on or in" the water tower. In making this argument, plaintiffs focused on Reber's testimony in which his personal viewing of the electrical equipment led him to conclude that it is not wholly contained on or in the water tower.

¶ 43 Plaintiffs argued that they were entitled to injunctive relief and attorney fees under section 11-13-15 of the Municipal Code (count IV); injunctive relief and fines under section 10-10-18(B) of the Zoning Code (count V); and declaratory relief that defendants violated ordinance No. 5606 (count VI). Also in count VI, plaintiffs requested a declaratory judgment that the license agreement between T-Mobile and defendants was a nullity, meaning that defendants had acquired no rights under the agreement.

¶ 44 Defendants countered during closing argument that plaintiffs' claims related to the height of the DuComm antennae were moot based on the passage of ordinance No. 5990 in December 2011, which granted a special-use permit for those antennae. Second, they argued that the two Verizon antennae were not relocated without authority and did not exceed any height limitation. According to defendants, ordinance No. 5606 does not prevent the relocation of the Verizon antennae because it pertains to T-Mobile, not Verizon. Rather, the Verizon ordinance controls the Verizon antennae,

which contains no restriction on height or on location. Third, defendants argued that ordinance No. 5606 does not require T-Mobile's electrical equipment at the base of the tower to be "on" or "in" the water tower. Plaintiffs argued that the document containing this requirement is not a part of ordinance No. 5606. In the alternative, if such a requirement exists, defendants are in compliance with it. Defendants pointed out that Michalik testified that the metal H-frame is connected to the water tower through a conduit. Also, defendants argued that ordinance No. 5606 requires only "substantial compliance" in that it states that the "antenna shall be installed and maintained in substantial conformance with the plans submitted and the testimony presented at the *** public hearings *** including the following plans and documents referenced below, as though they were attached to the this Ordinance." Finally, defendants argued that plaintiffs could not recover attorney fees under section 11-13-15 of the Municipal Code because they were not a prevailing party.

¶ 45 3. Trial Court's Ruling

¶ 46 On April 4, 2012, the trial court ruled in favor of defendants on all three counts, reasoning as follows. At the outset, the court noted that the case was complicated by the fact that the Village was involved in two different capacities: one, as owner of the water tower; and two, as a municipal body that was vested with all of the powers in the Municipal Code. The first issue was the appropriateness of a declaratory judgment action, given the "present posture" of the case. Plaintiffs sought a declaratory judgment that defendants violated ordinance No. 5606 with respect to the DuComm antennae. However, the court agreed with defendants that the passage of ordinance No. 5990 "mooted any question with regard to the DuComm" antennae, meaning that no actual controversy exists in which to make a binding declaration of rights. See 735 ILCS 2/5-701 (West

2008). With respect to plaintiffs' request for an injunction, the action sought to be accomplished was now accomplished, so the case was "not ripe or justiciable for injunctive relief either."

¶ 47 In terms of the Verizon antennae, there was "no evidence with regard to any height restriction for any other" antennae, such as AT&T or other cellular provider, and the placement of the Verizon antennae on the T-Mobile structure did not violate any ordinance presented to the court.

¶ 48 Regarding the electrical equipment, the issue was whether the electrical boxes on the H-frame were in or on the water tower. The court noted that the "testimony was that the H-frame was attached to the water tower both by bolts and by conduits and that it extended underground and was attached even at an underground level." The court stated that "that's certainly a reasonable interpretation" of the language at issue.

¶ 49 The issue of attorney fees was "likewise mooted since" the court could not make a finding that plaintiffs were the prevailing parties on any of the issues. Finally, plaintiffs' request for a declaratory judgment was what the court "would characterize as a throw-in line. It [was] not brought specifically pursuant to the Declaratory Judgment Act or statute."

¶ 50 Plaintiffs timely appealed.

¶ 51 II. ANALYSIS

¶ 52 Plaintiffs appeal the trial court's denial of relief and entry of judgment in favor defendants on counts IV, V, and VI of their second amended complaint. All three counts are based on the three alleged violations of ordinance No. 5606 referred to above: (1) the DuComm antennae, (2) the Verizon antennae, and (3) the electrical equipment.

¶ 53 A. Counts IV and V

¶ 54 We first address plaintiffs' arguments as to counts IV and V. Count IV was premised on section 11-13-15 of the Municipal Code, which provides:

> "In case any building or structure, including fixtures, is constructed, reconstructed, altered, repaired, converted, or maintained, or any building or structure, including fixtures, or land, *is used in violation of an ordinance* *** any owner or tenant of real property, within 1200 feet in any direction of the property[2] on which the building or structure in question is located who shows that his property or person will be substantially affected by the alleged violation, in addition to other remedies, may institute any appropriate action or proceeding (1) to prevent the unlawful construction, reconstruction, alteration, repair, conversion, maintenance, or use, (2) to prevent the occupancy of the building, structure, or land, (3) to prevent any illegal act, conduct, business, or use in or about the premises, or (4) to restrain, correct, or abate the violation. ***
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> *If an owner or tenant files suit hereunder and the court finds that the defendant has engaged in any of the foregoing prohibited activities, then the court shall allow the plaintiff a reasonable sum of money for the services of the plaintiff's attorney*. This allowance shall be a part of the costs of the litigation assessed against the defendant, and may be recovered as such.

[2]It is undisputed that plaintiffs are all property owners within 1,200 feet of the water tower lot.

> An owner or tenant need not prove any specific, special or unique damages to himself or his property or any adverse effect upon his property from the alleged violation in order to maintain a suit under the foregoing provisions." (Emphases added.) 65 ILCS 5/11-13-15 (West 2008).

¶ 55 "Section 11-13-15 is a valid grant to municipal authorities of the State's police powers to enforce zoning and building ordinances to promote the public health, welfare and safety." *Launius v. Najman*, 129 Ill. App. 3d 498, 502 (1984). The extension of this enforcement authority to adjacent landowners is to afford relief to private citizens whose municipal officials are slow or reluctant to act. *Id.* Section 11-13-15 of the Municipal Code permits an action by either a municipality, or an owner or tenant of real property within 1,200 feet in any direction of property allegedly used in violation of municipal or local ordinances, to seek a variety of equitable remedies for the alleged violations. *Greer v. Illinois Housing Development Authority*, 150 Ill. App. 3d 357, 389 (1987).

¶ 56 Count V was based on section 10-10-18(B) of the Zoning Code, which contains language that is very similar to the language in section 11-13-15 of the Municipal Code:

> "In case any building or structure is erected, constructed, reconstructed, altered, repaired, converted, or maintained, or any building, structure or land, is used *in violation of this Zoning Code*, the proper authorities of the Village or any person whose property value or use is or may be affected by such violation may, in addition to other remedies, institute an appropriate action or proceeding in equity to prevent such unlawful erection, construction, reconstruction, alteration, repair, conversion, or maintenance or use, to restrain, correct or abate such violation. ***" (Emphasis added.) Glen Ellyn Zoning Code §10-10-18(B) (amended eff. June 1, 1989).

¶ 57 In order to obtain relief under section 11-13-15 of the Municipal Code or section 10-10-18(B) of the Zoning Code, plaintiffs must show a violation of ordinance No. 5606. In this case, the trial court determined that there was no violation of ordinance No. 5606. To the extent that the trial court's judgment relies upon the construction of a statute or an ordinance, our review is *de novo*. *City of McHenry v. Suvada*, 396 Ill. App. 3d 971, 980 (2009). However, the trial court's findings of fact, such as whether a violation exists, will stand unless contrary to the manifest weight of the evidence. *Id.* A finding is against the manifest weight of the evidence if the opposite conclusion is clearly apparent. *Id.*

¶ 58 1. DuComm Antennae

¶ 59 Beginning with plaintiffs' first alleged violation, they argue that ordinance No. 5990 does not moot the issue. While plaintiffs concede that the DuComm antennae "are presently" in compliance with ordinance No. 5606 due to the passage of ordinance No. 5990, they argue that there were still 3½ years in which defendants violated ordinance No. 5606.

¶ 60 Ordinance No. 5606, enacted in August 2007, states that the grant of approval of a special-use permit to T-Mobile is subject to the following conditions. One of the conditions is paragraph G, which provides that T-Mobile:

> "will relocate the DuComm antennae as directed by DuComm at T-Mobile['s] expense, including, if necessary, mounting the DuComm antennae on top of the T-Mobile [structure] to ensure DuComm maintains an unobstructed signal from all directions. In the event that the DuComm antennas exceed their current height of 140 feet, such relocation will require approval of a Special Use Permit for such purpose." Glen Ellyn Ordinance No. 5606 (eff. August 27, 2007).

The DuComm antennae were relocated to T-Mobile's structure at a height greater than 140 feet in July 2008, but no special-use permit was obtained. It was not until December 12, 2011, that the Village acquired a special-use permit via the enactment of ordinance No. 5990.

¶ 61 We agree with the trial court that the passage of ordinance No. 5990 renders the alleged violation of ordinance No. 5606, based on the DuComm antennae, moot. Section 11-13-15 of the Code provides for injunctive relief, which is the relief plaintiffs sought in this case. See 65 ILCS 5/11-13-15 (West 2008) ("In any action or proceeding for a purpose mentioned in this section, the court *** has the power and in its discretion may issue a restraining order, or a preliminary injunction, as well as a permanent injunction ***"). Plaintiffs also requested injunctive relief under section 10-10-18(B) of the Zoning Code. See Glen Ellyn Zoning Code §10-10-18(B) (amended eff. June 1, 1989) ("any person whose property value or use is or may be affected by such violation may, in addition to other remedies, institute an appropriate action or proceeding in equity to prevent ***, to restrain, correct or abate such violation"). Once defendants obtained a special-use permit allowing the DuComm antennae to remain on the water tower at their current height of just under 150 feet, injunctive relief was no longer an option for the trial court. See *Leavell v. Department of Natural Resources*, 397 Ill. App. 3d 937, 955 (2010) (an issue is moot if no actual controversy exists or where events occur which make it impossible for the court to grant effectual relief); *Agency, Inc. v. Grove*, 362 Ill. App. 3d 206, 209 (2005) (an issue is moot when its resolution could not have any practical effect on the existing controversy); *LaSalle Nat'l Bank, N.A. v. City of Lake Forest*, 297 Ill. App. 3d 36, 43 (1998) (where declaratory and injunctive relief was no longer an option for the trial court, the issue was moot).

¶ 62 2. Attorney Fees Under Section 11-13-15

¶ 63 Plaintiffs next argue that even if their request for injunctive relief under section 11-13-15 is moot, they are still entitled to attorney fees for the "past violation" of ordinance No. 5606. Again, while plaintiffs concede that the DuComm antennae are currently in compliance with ordinance No. 5606 based on the passage of ordinance No. 5990 in December 2011, plaintiffs argue that defendants violated ordinance No. 5606 for 3½ years prior to the passage of ordinance No. 5606. This past "violation," according to plaintiffs, automatically entitles them to attorney fees under section 11-13-15.

¶ 64 As stated above, section 11-13-15 provides that "[i]f an owner or tenant files suit hereunder and the court finds that the defendant has engaged in any of the foregoing prohibited activities, then the court shall allow the plaintiff a reasonable sum of money for the services of the plaintiff's attorney." 65 ILCS 5/11-13-15 (West 2008). The award of attorney fees under section 11-13-15 is mandatory and not discretionary, based on a finding that the defendant has engaged in prohibited activity. *People ex rel. Klaeren II v. Village of Lisle*, 352 Ill. App. 3d 831, 845 (2004); see also *City of Chicago v. Higginbottom*, 219 Ill. App. 3d 602, 616 (1991) (if the complaining adjoining landowner establishes that a violation of the municipal ordinances has been committed by the defendant, the granting of attorney fees is mandatory). The allowance of attorney fees under this section is a permissible statutory sanction to secure compliance with local building and zoning ordinances. *Launius*, 129 Ill. App. 3d at 502.

¶ 65 In analyzing the fee provision in section 11-13-15, there is no reference to a "prevailing party" or party who "substantially prevails." Therefore, we agree with plaintiffs that the cases relied upon by defendants, which analyze statutes with "prevailing party" language, are not helpful here. This confusion may be due to the trial court's ruling in which it stated that the issue of attorney fees

was "likewise mooted since" the court could not make a finding that plaintiffs were the "prevailing parties" on any of the issues.

¶ 66 Though section 11-13-15 makes no mention of "prevailing party," it does require a finding by the trial court that defendants engaged in a prohibited activity, such as using a structure or fixture "in violation of an ordinance." Plaintiffs argue that the trial court found, at least implicitly, that the DuComm antennae violated ordinance No. 5606 by finding that the DuComm antennae "are now lawful." We disagree. The trial court declined to find that defendants violated ordinance No. 5606. According to the trial court, the passage of ordinance No. 5990 mooted not only the compliance issue, but also the issue of attorney fees.

¶ 67 Again, the language at issue is the condition that "[i]n the event that the DuComm antennas exceed their current height of 140 feet, such relocation will require approval of a Special Use Permit for such purpose." Glen Ellyn Ordinance No. 5606 (eff. August 27, 2007). Plaintiffs argue that this condition was violated because it required the Village to obtain a special use permit *before* relocating the DuComm antennae.

¶ 68 In construing an ordinance, we apply the same principles of construction that we would in construing a statute. *Ruisard*, 406 Ill. App. 3d at 661. Our duty is to give effect to the intention of the drafters by concentrating on the terminology, its goals and purposes, the natural import of the words used in common and accepted usage, the setting in which they are employed, and the general structure of the ordinance. *Id*. We review *de novo* the interpretation of an ordinance unless the language is ambiguous. *Id*.

¶ 69 Here, the language of the ordinance, while requiring a special use permit in the event that the DuComm antennae exceed the height of 140 feet, is ambiguous as to when the special use permit

must be obtained. Plaintiffs interpret the ordinance as requiring a special use permit *prior* to the relocation, whereas Hulseberg testified that nothing in the ordinance stated that such a permit had to be obtained *before* the DuComm could exceed 140 feet. Because the ordinance is silent as to the timing of when a special use permit must be obtained, which is the basis of the alleged violation, the ordinance is ambiguous in this respect, meaning that we may give deference to the Village's interpretation. See *Ruisard*, 406 Ill. App. 3d at 662 (because an agency or village can make an informed judgment on the issue based upon its experience and expertise, it is generally recognized that courts will give substantial weight and deference to an interpretation of an ambiguous statute by the agency or village charged with the administration and enforcement of the statute).

¶ 70 As evidence that defendants violated ordinance No. 5606, plaintiffs point to Hulseberg's November 2008 email in which she stated that the antennae exceeded the maximum height permitted in ordinance No. 5606 and thus were "in violation." However, plaintiffs ignore the remainder of Hulseberg's testimony, in which she explained that the DuComm antennae were *not* in violation of ordinance No. 5606. Hulseberg, who worked for the Village and helped ensure compliance with the Code, testified that she changed her mind and concluded that there was no violation of ordinance No. 5606.

¶ 71 Hulseberg gave two reasons why the DuComm antennae never violated ordinance No. 5606. First, she explained that ordinance No. 5606 does *not* contain a maximum height limitation for the DuComm antennae as it does for the T-Mobile antennae. Rather, it contains a "condition" that if the DuComm antennae exceed a height of 140 feet, then a special-use permit is required. Yet, Hulseberg pointed out that nothing in paragraph G of ordinance No. 5606 states that a special-use permit must be obtained *before* the DuComm antennae may exceed this height. See Glen Ellyn Ordinance No.

5606 (eff. August 27, 2007) ("In the event that the DuComm antennas exceed their current height of 140 feet, such relocation will require approval of a Special Use Permit for such purpose"). Therefore, in Hulseberg's opinion, defendants' failure to obtain a special-use permit prior to the relocation of the DuComm antennae at a height greater than 140 feet did not constitute a violation of ordinance No. 5606.

¶ 72 The second and perhaps more persuasive reason that no past violation existed is because, as Hulseberg explained, the Village Code contains no height limitations for antennae, only antenna structures. Therefore, Hulseberg opined that the special-use requirement for the DuComm antennae in ordinance No. 5606 was a mistake. Consistent with this view, ordinance No. 5990, which granted the special-use permit for the DuComm antennae, states that the Village "has chosen to voluntarily apply for a Special Use Permit" even though the Village "does not believe that a Special Use Permit is required because the Zoning Code only requires a Special Use Permit for antenna support structures, not for antennae." Glen Ellyn Ordinance No. 5990 (eff. December 12, 2011). Ordinance No. 5990 goes on to say that "the two (2) existing DuComm antennae, which are located at a height of just under 150 feet and have a diameter of 2.75 inches, *were in full compliance* with the general intent of the Village in its passage of Ordinance No. 5606, and that, absent a request that a Special Use be granted, the Village would have concluded that, under general zoning principles and under a municipality's discretion, it would not have felt the need for a public hearing or an appropriate consideration of the granting of a Special Use." (Emphasis added.) Glen Ellyn Ordinance No. 5990 (eff. December 12, 2011).

¶ 73 Based on the passage of ordinance No. 5990, the trial court determined that any issues regarding a violation or attorney fees were moot. While plaintiffs argue that ordinance No. 5990

does not moot the attorney fee issue, we agree with the trial court that plaintiffs are not entitled to attorney fees. See *Janda v. U.S. Cellular Corp.*, 2011 IL App (1st) 103552, ¶ 60 (we may affirm on any basis appearing in the record, whether or not the trial court relied on that basis or its reasoning was correct). Both Hulseberg's testimony and the language in ordinance No. 5990 defeat any claim that defendants' failure to obtain a special-use permit prior to relocating the DuComm antennae constituted a "past violation" of ordinance No. 5606. Through Hulseberg's testimony, defendants presented evidence that a special-use permit was not required *before* the DuComm antennae were relocated, and also that a special-use permit should never have even been required in ordinance No. 5606. Rather than amending or deleting ordinance No. 5606, which the Village had the authority to do (*Condominium Ass'n of Commonwealth Plaza v. City of Chicago*, 399 Ill. App. 3d 32, 40, 44 (2010)), the Village went ahead and obtained a special-use permit in its passage of ordinance No. 5990, despite its conclusion that such a permit was unnecessary because the DuComm antennae "were in full compliance with the general intent of the Village in its passage of ordinance No. 5606." Glen Ellyn Ordinance No. 5990 (eff. December 12, 2011). For these reasons, plaintiffs have not met their burden of showing a "past violation."

¶ 74 Under plaintiffs' logic, the delay in obtaining a special-use permit constitutes an automatic violation of ordinance No. 5606, thereby entitling them to attorney fees. However, such logic usurps the decision-making role of the trial court. Section 11-13-15 is clear that, in order to be entitled to attorney fees, the trial court must make a finding that defendants engaged in one of the prohibited activities. Whether or not the court makes such a finding will depend on the testimony and evidence presented in each particular case. In this case, the evidence presented by plaintiffs did not show that defendants violated ordinance No. 5606 by relocating the DuComm antennae at a height greater than

140 feet without first obtaining a special-use permit. Therefore, plaintiffs are not entitled to attorney fees under section 11-13-15.

¶ 75 3. Verizon Antennae

¶ 76 Second, we agree with the trial court that the relocation of the Verizon antennae onto T-Mobile's structure did not violate ordinance No. 5606. Plaintiffs are correct that ordinance No. 5606 establishes a maximum antennae height of 132.5 feet, and that the two Verizon antennae that were relocated exceed this height. However, ordinance No. 5606 is a special-use permit for T-Mobile antennae and therefore applies only to T-Mobile antennae (and the possible relocation of DuComm antennae). As defendants argued, the Verizon antennae are subject to a different ordinance, ordinance No. 4117 (Glen Ellyn Ordinance No. 5909 (eff. April 11, 1994)), which granted a special-use permit for two Verizon antennae in 1994.[3] Ordinance No. 4117 contains no restriction as to the location, relocation, or height of these two Verizon antennae.

¶ 77 Plaintiffs' argument in this respect is resolved by well-established principles of statutory construction. See *Victory Auto Wreckers, Inc. v. Village of Bensenville*, 358 Ill. App. 3d 505, 508 (2005) (in construing the challenged ordinance, we apply the same principles of construction that we would in construing a statute). Ordinance No. 4117, and not ordinance No. 5606, is the more specific provision that controls what is permissible regarding the Verizon antennae. See *Faville v. Burns*, 2011 IL App (1st) 11035, ¶ 18 (it is a fundamental rule of statutory construction that where there exists a general statutory provision and a specific statutory provision both relating to the same subject - either in the same or a different act - the specific provision controls and should be applied).

[3]There is no dispute that although ordinance No. 5990 refers to Ameritech Mobile Phone Service, Verizon purchased these two antennae.

Also, because ordinance No. 5606 is silent regarding the Verizon antennae, plaintiffs ignore the rule that we will not depart from the plain language of the ordinance by reading into it exceptions, limitations, or conditions that conflict with the expressed intent. See *Solon v. Midwest Medical Records Ass'n, Inc.*, 236 Ill. App. 3d 433, 441 (2010) (we do not depart from the plain language by reading into it exceptions, limitations, or conditions that conflict with the expressed intent). In other words, as the trial court found, the placement of the Verizon antennae on the T-Mobile structure did not violate any ordinance presented to the court. Accordingly, neither the relocation nor height of the two Verizon antennae violate ordinance No. 5606.

¶ 78 4. Electrical Equipment

¶ 79 Plaintiffs' third alleged violation of ordinance No. 5606 is that electrical equipment at the base of the water tower is not "completely" or "wholly contained in or on" the water tower. As a preliminary matter, we note that defendants argue that the document containing the "wholly contained in or on" requirement is not part of ordinance No. 5606. The parties debated this issue before the trial court, and it found that the document is incorporated into ordinance No. 5606. Ordinance No. 5606 incorporates a list of documents by reference, including T-Mobile's "Application for a Special Use Permit." The document at issue is part of T-Mobile's application packet, causing the court to conclude that it is also part of ordinance No. 5606. While defendants make several arguments as to why the document is not part of the ordinance, they do not recognize that the trial court already ruled on this issue. Even assuming that the document is incorporated into ordinance No. 5606, there is no violation based on the location of the electrical equipment.

¶ 80 That document provides that T-Mobile's communication facility will be "wholly contained in and on" the water tower, "located within or on" the water tower, or "completely contained within

or on" the water tower. According to plaintiffs, even "a cursory review" of one of their photograph exhibits demonstrates that the electrical equipment violates this requirement, in that there is approximately a one-inch separation between the vertical poles of the metal H-frame and the concrete ring surrounding the water tower. While acknowledging that there is a horizontal conduit connecting the H-frame to the water tower, plaintiffs argue that the H-frame itself is not attached to the water tower.

¶ 81 Our duty is to determine and give effect to the intent of the legislative authority. *Victory*, 358 Ill. App. 3d at 508. The best indication of the drafters' intent is the plain and ordinary language itself. *Dodaro v. Illinois Workers' Compensation Comm'n*, 403 Ill. App. 3d 538, 545 (2010). "Effect should be given to the intention of the drafters by concentrating on the terminology, its goals and purposes, the natural import of the words used in common and accepted usage, the setting in which they are employed, and the general structure of the ordinance." *Monahan v. Village of Hinsdale*, 210 Ill. App. 3d 985, 993 (1991). In determining the plain and ordinary meaning of words, we may consult a dictionary if a word or phrase is undefined. *Dodaro*, 403 Ill. App. 3d at 545. "Wholly" is defined as "altogether, completely, totally," (*Webster's Third New International Dictionary* 2612 (1986)), "contained" is defined as "to keep within limits" (*Webster's Third New International Dictionary* 490 (1986), and "on" is defined as "in or into the position of being attached to or covering a surface" (*Webster's Third New International Dictionary* 1575 (1986)).

¶ 82 In interpreting the language of ordinance No. 5606, we agree with the trial court that the electrical equipment is "wholly contained in and on," "located within or on," or "completely contained within or on" the water tower. The photograph exhibits illustrate that the metal H-frame containing the three electrical boxes is attached to the water tower by virtue of two, horizontal metal

pipes or conduits. Defense witness Michalik, who had supervised one thousand other T-Mobile antennae installations, testified that the metal H-frame was connected to the water tower through the conduit. In addition, another exhibit of T-Mobile's plan shows conduits from the electrical boxes running underground. According to the trial court, the "testimony was that the H-frame was attached to the water tower both by bolts and by conduits and that it extended underground and was attached even at an underground level."

¶ 83 Plaintiffs' argument that the vertical poles of the H-frame are not attached to the water tower because they are one inch from the base of the water tower is an unreasonably narrow reading of the phrase "wholly on" the water tower. See *In re Detention of Lieberman*, 201 Ill. 2d 300, 308 (2002) (each word, clause, and sentence is to be given a reasonable meaning, and we are to afford the language at issue the fullest, rather than narrowest, possible meaning to which it is susceptible). On this point, the court stated that it saw "no need nor any benefit to the people of the Village" by requiring "that the metal H-frame be bent to fifteen degrees or whatever the degree would be to make it flush with the base of the water tower." It said that doing so would be a "useless act" and "unnecessary given the fact that the frame is attached to the water tower in some manner that is not insubstantial."

¶ 84 Like the trial court, we do not believe that the tiny separation *at the base of the water tower* between the vertical poles of the H-frame and the concrete ring surrounding the tower violates the requirement that the electrical equipment be "wholly contained on" the water tower. The photograph exhibit shows that one of the vertical poles of the H-frame is attached to the water tower by two metal conduits, not at the base, but at a higher level. Plaintiffs' argument would have some merit if the H-frame was not connected to the water tower in any manner. But to dictate the specific

location where the H-frame must be connected to the water tower is not a reasonable interpretation of the language at issue.

¶ 85 As defendants point out, plaintiffs do not challenge the antennae on top of the water tower even though they are not attached directly to the water tower but to the T-Mobile structure, which is in turn attached to the water tower. Like the antennae attached to T-Mobile's structure, the electrical equipment is "wholly contained on" the water tower through the H-frame, which is attached to the water tower by conduits, both above and underground. Accordingly, plaintiffs' argument that the electrical equipment violates ordinance No. 5606 fails.

¶ 86 5. Fines Under Zoning Code

¶ 87 Plaintiffs also argue that based on the three alleged violations, they are entitled to fines under the Zoning Code, which provides:

¶ 88 "Any person, persons, firm or corporation *** who violates the terms of this Zoning Code shall be guilty of a petty offense punishable by a fine not to exceed Five Hundred Dollars ($500.00) for each week the violation remains uncorrected with each week or part thereof constituting a separate offense." Glen Ellyn Zoning Code §10-10-18(A) (amended eff. June 1, 1989).

Defendants argue that only the Village has the ability to collect and assess fines. Indeed, the trial court recognized that this case is unique in that the Village has a dual role in this case. On the one hand, the Village enforces its own ordinances; on the other hand, it owns the water tower. Regardless, we need not decide any issue regarding fines because we have rejected all of plaintiffs' claims that defendants violated ordinance No. 5606. Therefore, this argument is easily rejected.

¶ 89 B. Count VI

¶ 90 Plaintiffs' final count sought a declaratory judgment against defendants stating that: (1) defendants violated ordinance No. 5606 in the three ways discussed above; (2) defendants acquired no rights under ordinance No. 5606 to install its antennae on the water tower; and (3) the Licensing Agreement between T-Mobile and the Village is a nullity. Plaintiffs also request this court to disgorge any proceeds the Village received through the License Agreement.

¶ 91 The trial court rejected plaintiffs' claim, noting that it was not brought specifically pursuant to the Declaratory Judgment statute Act (735 ILCS 5/2-701 (West 2008)). According to the court, count VI was merely a "throw-away line." We note that plaintiffs have not attempted to cure this deficiency on appeal by citing the statute or explaining why it entitles them to declaratory relief. Therefore, the argument is forfeited.

¶ 92 This court is not a depository wherein we must research and develop the parties' claims and arguments. See *People v. Banks*, 378 Ill. App. 3d 856, 871 (2007). Rather, this court is entitled to have the issues clearly defined and to be cited pertinent authority. *Id*. Arguments that do no satisfy the requirements of Illinois Supreme Court Rule 341 (eff. July 1, 2008) do not merit consideration on appeal. *Id*.

¶ 93 In any event, we have affirmed the trial court's decision that defendants have not violated ordinance No. 5606 in any of the three ways alleged by plaintiffs, and all of plaintiffs' claims in this count hinge on a determination that defendants violated the ordinance. Therefore, there is no basis upon which to grant plaintiffs declaratory relief. See *Howard v. Chicago Transit Authority*, 402 Ill. App. 3d 455, 460 (2010) (declaratory judgment not appropriate where the claims in the defendant's complaint had already been litigated and rejected).

¶ 94 Having affirmed the court's denial of relief as to counts VI, V, and VI of plaintiffs' second amended complaint, we need not consider plaintiffs' argument that this court should assign this matter to a new trial judge on remand. For the reasons stated, no remand is required in this case.

¶ 95 III. CONCLUSION

¶ 96 For the above reasons, the judgment of the Du Page County circuit court in favor of defendants and against plaintiffs on counts IV, V, and VI of plaintiffs' second amended complaint is affirmed.

¶ 97 Affirmed.