

CALL TO ORDER

Mayor Lentz called the Executive Session to order at 8:05PM to discuss pending litigation pursuant to 5 ILCS 120, Section 2(c)(11).

Motion to convene the Executive Session

RESULT:	CARRIED [UNANIMOUS]
MOVER:	Dawn Abernathy, Trustee
SECONDER:	Kerston Russell, Trustee
AYES:	Rekus, Russell, Abernathy, Semple, Meier
ABSENT / NOT VOTING:	Norton

ATTENDANCE

Clerk Timmerman took the roll. It indicated the following:

Board Attendance

PRESENT: Trustees Abernathy, Meier, Rekus, Russell and Semple; Mayor Lentz

ABSENT: Trustee Norton

Village Attendance

PRESENT: Attorney Carr, Assistant Village Administrator Flynn, Village Administrator Lobaito, Attorney Marino, Community Development Director Orenchuk and incoming Assistant Village Administrator Peter Vadopalas

MUNDELEIN VS. GRAYSLAKE/SAIA LAWSUIT UPDATE

Village Administrator Lobaito stated that the purpose of the meeting is to receive an update on the recent court ruling and discuss options going forward.

Attorney Carr described the outcome as "disappointing" and explained the Directed Finding outcome wherein all evidence regarding the SAIA Burr Ridge terminal was struck, with the judge deciding that the points of similarities were minimally relevant. He stated that the court heard the testimony of Mundelein's expert witnesses and decided it carried no weight because the new state-of-the-art Grayslake facility has mitigation efforts to lessen impacts compared to the Burr Ridge facility. He added that the court discounted all expert testimony, especially regarding noise and traffic, because it was based on assumptions rather than on actual operation of the Grayslake plant. He also noted that residents from the nearby neighborhood testified that they have been affected but the court discounted this. He concluded by noting that Mundelein is left with a legal issue wherein the court applied a nuisance title in what was really a zoning issue.

A discussion followed on the "no right turn" sign and traffic leaving the SAIA facility heading south on Midlothian. Attorney Carr stated that SAIA has only been operating at 45% capacity and it is reasonable

to assume that the attention to mitigation efforts will fall off when operation is increased to 100%. He stressed that this is an unreasonable use for this location, as heavy industrial with external impacts is incompatible with a residential area.

Trustee Rekus asked if Mundelein is now liable for SAIA and Grayslake's attorney fees and court costs. Attorney Carr replied that the issue must still be resolved but stated that such a request would not be likely to succeed.

Trustee Rekus asked if the Directed Finding would hold more weight against Mundelein in an appeal and Attorney Carr explained that it would actually be the opposite since the court pre-empted our access to SAIA and Grayslake's evidence.

Trustee Rekus inquired about the cost of an appeal and Attorney Carr explained that it would just be for brief writing because the expert testimony is already in the record. Administrator Lobaito estimated that an appeal would result in an additional \$50,000 in attorney fees on top of the \$750,000 already spent.

Trustee Rekus inquired about the response of the residents who live near the facility. Attorney Carr stated that some remain passionate and scared, while others are more resigned and accepting.

Trustee Rekus asked if an appeal is the final step. Attorney Carr replied that it could then go to the Illinois Supreme Court but added that such cases are rarely granted. He noted that this is an unusual case due to the fact that SAIA continued to build and operate despite the lawsuit.

Administrator Lobaito reminded the board that the appraiser was concerned about the loss in property values and provided a comparison that showed only an 8% appreciation in the properties near the facility as compared to 15% in similar houses (2014 compared to 2016, after the SAIA facility was started). He stated that the loss in value will have to be made up by all other taxpayers in the Village.

Trustee Rekus stressed that winning an appeal won't change property values since the SAIA facility will still be there. Attorney Marino interjected that an appeal win could force the removal of the buildings. He explained that the judge used nuisance principles instead of zoning principles, adding that the main issue in the appeal will be whether the judge erred in throwing out Mundelein's expert testimony. He also pointed out that SAIA's voluntary and self-imposed mitigation efforts can be stopped when the case is over.

Trustee Russell asked if Attorneys Carr and Marino feel strongly enough about an appeal to take the case on a contingency basis and both attorneys replied affirmatively.

Director Orenchuk asked if it is unusual for an industrial operation to locate so close to an established residential neighborhood and Attorney Marino replied that it is.

Trustee Abernathy left at 9:04 and returned at 9:07.

Trustee Semple requested information on the next steps to be taken, as well as the timeline, and Attorney Marino provided this. He explained that the Village has 30 days to decide on an appeal and recommended that trustees take two weeks and make a final decision at the next Executive Session. He estimated that it will most likely be summer 2018 before an appeal is decided. Trustee Semple surmised

that if Mundelein wins an appeal, SAIA would then appeal and Attorney Marino replied affirmatively but added that it will be more difficult at that point. He explained that the judge failed to make the case bullet-proof since he didn't hear the entire case. He surmised that the judge perhaps wanted the appellate court to decide.

Mayor Lentz confirmed that the Board will reflect for two weeks and make a decision at the next Executive Session.

ADJOURNMENT

Motion to adjourn the Executive Session

RESULT:	CARRIED [UNANIMOUS]
MOVER:	Dawn Abernathy, Trustee
SECONDER:	Kerston Russell, Trustee
AYES:	Rekus, Russell, Abernathy, Semple, Meier
ABSENT / NOT VOTING:	Norton

The Executive Session was adjourned at 9:14PM.

Katy Timmerman By Peter Vadopoulos, Deputy Clerk
Village Clerk