

VILLAGE PRESIDENT
Ray Danford

VILLAGE CLERK
Jerry Menard

VILLAGE TRUSTEES
Corby Valentine
Steve Smith
Tony Miller
Rita Baker
Seth Speiser
Charlie Mattern

VILLAGE OF FREEBURG

FREEBURG MUNICIPAL CENTER
14 SOUTHGATE CENTER, FREEBURG, IL 62243
PHONE: (618) 539-5545 • FAX: (618) 539-5590
Web Site: www.freeburg.com

VILLAGE ADMINISTRATOR
Dennis Herzing

VILLAGE TREASURER
Bryan A. Vogel

PUBLIC WORKS DIRECTOR
Ronald Dintelmann

POLICE CHIEF
Melvin E. Woodruff, Jr.

VILLAGE ATTORNEY
Stephen R. Wigginton

August 31, 2009

NOTICE

MEETING OF LEGAL AND ORDINANCE COMMITTEES (Annexation; Building; Zoning; Subdivision) Speiser/Baker/Mattern

A Legal and Ordinance Committee Meeting of the Village of Freeburg will be held at the Municipal Center, Executive Board Room, **Wednesday, September 2, 2009, at 4:30 p.m.**

LEGAL AND ORDINANCE COMMITTEE MEETING AGENDA

I. Items to be Discussed

- A. Old Business
 - 1. Approval of August 5, 2009 Minutes
 - 2. Community Improvement Board/Material Requirements on Commercial Buildings/Nuisance Abatement Code/Building Code application
 - 3. Status of Public Hazard Homes
 - 4. TIF Litigation
 - 5. Stumpf Lawnmower business
- B. New Business
- C. General Concerns
- D. Public Participation
- E. Adjourn

At said Legal and Ordinance Meeting, the Village Trustees may vote on whether or not to hold an Executive Session to discuss the selection of a person to fill a public office [5 ILCS, 120/2 - (c)(3)], litigation [5 ILCS, 120/2 - (c)(11)] personnel [5 ILCS, 120/2 - (c) (1) a.]; or real estate transactions [5 ILCS, 120/2 - (c)(5)].

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Legal and Ordinance Committee Meeting
(Annexation; Building; Zoning; Subdivision)
(Speiser/Baker/Mattern)
Wednesday, September 2, 2009 at 4:30 p.m.

The meeting of the Legal and Ordinance Committee was called to order at 4:50 p.m. by Chairman Seth Speiser on Wednesday, September 2, 2009, in the Freeburg Municipal Center. Members attending were Chairman Seth Speiser, Trustee Rita Baker, Trustee Charlie Mattern, Village Administrator Dennis Herzing and Office Manager Julie Polson.

A. OLD BUSINESS:

1. Approval of August 5, 2009 Minutes: Trustee Rita Baker motioned to approve the August 5, 2009 minutes and Trustee Seth Speiser seconded the motion. All voting aye, motion carried.

2. Community Improvement Board/Material Requirements on Commercial Buildings/Nuisance Abatement Code: Seth and Dennis are going to meet with Phil tomorrow at 11:00 a.m. to discuss the building code requirements before we meet with Mike Mitchell of St. Clair County Zoning. Dennis said we need to find out how St. Clair County is picking and choosing their inspections. If we enforce the code, we will have to have occupancy permits on everything. Charlie said Shiloh does not have the reputation of being hard to build in but has a significantly different game there. Seth said Ray has also asked that we address the material requirements on buildings. Julie will copy all the previous minutes on this and distribute to the committee as well as the nuisance code that the Community Improvement Board recommended to this committee.

3. Status of Public Hazard Homes: Dennis said the appeal was denied due to a technicality. The court refused to hear it because the original motion we filed for the order of demolition hasn't been resolved. The court recognizes it is a moot issue because the building has been demolished, by statute, they can't hear an appeal on a case that isn't resolved. The committee agreed to talk about this with Steve on Tuesday night. Seth asked if Phil went by and looked at 406 W. Phillips and Julie said she will check with Phil.

4. TIF litigation: Dennis said Steve will be here Tuesday for an executive session. He said we were successful in getting Commerce Bank to change the waterfall date. The sales tax money won't be used to pay the bonds assuming Koppeis pays his first real estate tax payment on time.

Legal and Ordinance Committee Meeting
Wednesday, September 2, 2009
Page 1 of 2

5. Stumpf Lawnmower Business: Julie advised Stumpf has been issued four more citations, three for disturbing the peace and one for operating a home business which are scheduled to go to court on September 17, 2009.

B. NEW BUSINESS: None.

C. GENERAL CONCERNS: None.

D. PUBLIC PARTICIPATION: None.

E. ADJOURN: *Trustee Rita Baker motioned to adjourn the meeting at 5:17 p.m. and Trustee Charlie Mattern seconded the motion. All voting aye, the motion carried.*



Julie Polson
Office Manager

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Legal and Ordinance Committee Meeting
(Annexation; Building; Zoning; Subdivision)
(Speiser/Baker/Mattern)
Wednesday, August 5, 2009 at 5:30 p.m.

The meeting of the Legal and Ordinance Committee was called to order at 5:30 p.m. by Chairman Seth Speiser on Wednesday, August 5, 2009, in the Freeburg Municipal Center. Members attending were Chairman Seth Speiser, Trustee Rita Baker, Village Administrator Dennis Herzing and Office Manager Julie Polson. Guest present: Mike Blaies.

A. OLD BUSINESS:

1. Approval of July 1, 2009 Minutes: *Trustee Rita Baker motioned to approve the July 1, 2009 minutes and Trustee Seth Speiser seconded the motion. All voting aye, motion carried.*

2. Community Improvement Board/Material Requirements on Commercial Buildings/Nuisance Abatement Code: Seth had a discussion with Frank Heiligenstein on this topic and Frank thinks if we do adopt inspections on commercial upgrades, it should include apartment buildings. Seth said Dave Favre is not in favor of that. Seth discussed the apartment building by the railroad with an electrical inspector who said that building is not considered commercial because they are not running the wire in conduit. The County differentiates residential and commercial by saying residential is residential. Dennis will contact the County to verify this.

3. Status of Public Hazard Homes: Dennis said Phil received a call from Kinzingers advising they are very busy right now and will get to it towards fall.

4. TIF litigation: Dennis talked to Koppeis who advised Dennis he has talked with the banks. He thinks the banks will go along with changing the waterfall date. Koppeisis also going to request that they allow the excess property tax to go to pay himself. Dennis said he talked to Ray about that and doesn't know that we agree with that. Dennis' main concern is that it all doesn't go to pay bonds. Joe is to provide us with the letters first so we can review them prior to them going out. There will be two letters--one letter will address moving the waterfall date and the other letter will address the excess property tax.

5. Bill's Autobody: The committee agreed it looks like Bill has tried to clean up his area. There is still a problem with the drainage and Dennis said it will take a lot of fill to fix it and doesn't think Bill will do that. Seth asked Dennis to send him a

Legal and Ordinance Committee Meeting
Wednesday, August 5, 2009
Page 1 of 2

letter stating we appreciate what he has done. Phil will continue to monitor the situation.

Trustee Rita Baker motioned to amend the agenda to add Stumpf Lawnmower Business and Trustee Seth Speiser seconded the motion. All voting aye, the motion carried. Dennis said the police have been working with Phil and have at least one person who stated in a taped interview that he bought a lawnmower from Stumpf. Dennis thinks we have a pretty strong case that Stumpf is operating a business. He also said a couple of neighbors are willing to come in and sign a complaint that he is disturbing the peace. We will bundle all of those and have Attorney Manion take it back to court.

An ordinance was included in the packet to clean up our code. The section in our code that addresses massage parlors was outdated. The Massage Licensing Act governs massage parlors now. This ordinance will repeal that section of the code.

Trustee Rita Baker motioned to recommend the ordinance repealing Title XI, Chapter 112 of the Revised Code of the Village of Freeburg and Trustee Seth Speiser seconded the motion. All voting aye, the motion carried.

B. NEW BUSINESS:

1. Grassroots Advocacy Program: Dennis said IML is requesting that someone be designated as a contact person when they have information where our opinion is requested, i.e. upcoming legislation that needs to be voted on. Dennis said we don't have to respond if we don't agree with their position. Julie will be the designated contact person.

Julie asked if anyone was going to the IML Conference. Seth will check his calendar.

C. GENERAL CONCERNS: None.

D. PUBLIC PARTICIPATION: Mike asked about the area around 106 Phillips stating the yard is full of junk. Dennis will have Phil take a look at it.

E. ADJOURN: *Trustee Rita Baker motioned to adjourn the meeting at 5:55 p.m. and Trustee Seth Speiser seconded the motion. All voting aye, the motion carried.*



Julie Polson
Office Manager

NOTICE

The text of this order may be changed or corrected prior to the time for filing of a Petition for Rehearing or the disposition of the same.

NO. 5-08-0467

IN THE
APPELLATE COURT OF ILLINOIS
FIFTH DISTRICT

FILED
AUG 24 2009
JOHN J. FLOOD
CLERK APPELLATE COURT, 5TH DIST.

THE VILLAGE OF FREEBURG,
a Municipal Corporation,

Plaintiff-Appellee,

v.

C and S, LTD., a Limited Partnership,
PHIL SHEETS, and SHEETS ENTERPRISES,
LTD., a Limited Partnership, Successor in
Interest of C and S, Ltd., a Limited Partnership,

Defendants-Appellants.

) Appeal from the
) Circuit Court of
) St. Clair County.

) No. 07-MR-93

) Honorable
) Andrew J. Gleeson,
) Judge, presiding.

RECEIVED

AUG 31 2009

SUMMARY ORDER

The defendants, C and S, Ltd., Phil Sheets, and Sheets Enterprises, Ltd., appeal an order of the circuit court of St. Clair County that granted the motion for attorney fees and costs filed by the plaintiff, the Village of Freeburg (the Village). For the following reasons, we dismiss the appeal for a lack of appellate jurisdiction, pursuant to Illinois Supreme Court Rule 23(c)(1) (166 Ill. 2d R. 23(c)(1)).

On May 30, 2007, the Village filed an amended petition, pursuant to section 11-31-1(a) of the Illinois Municipal Code (the Code) (65 ILCS 5/11-31-1(a) (West 2006)), for the demolition of a structure belonging to the defendants, which was located at 409 West Washington Street in Freeburg. In the amended petition, the Village additionally requested an order awarding the Village all the costs associated with the demolition and rehabilitation of the land, including court costs and attorney fees. On February 25, 2008, the Village filed a motion for attorney fees and costs, which the Village claimed were recoverable as expenses

incurred by the Village in its efforts to enforce the Code pursuant to the language of section 11-31-1. According to the Village's motion, on October 10, 2007, the defendants provided the Village with a closing statement, indicating that the subject property had been sold by the defendants. The motion stated that the subsequent purchaser had submitted a redevelopment plan, which had been approved by the Village. Arguing that its attorney fees and costs of litigating the petition amounted to costs of enforcing the Code, the Village requested \$3,011.34, plus any additional attorney fees and costs incurred by the Village in connection with the case between January 31, 2008, and the entry of an order by the circuit court.

On April 8, 2008, the circuit court entered an order that, *inter alia*, granted the Village \$3,011.34 for attorney fees and costs. On April 28, 2008, the defendants filed a motion to reconsider, vacate, and set aside. On August 11, 2008, the circuit court entered an order denying the motion to reconsider, vacate, and set aside. Due to attorney fees and costs incurred by the Village in briefing and arguing the motion to reconsider, vacate, and set aside, the circuit court ordered the defendants to pay the Village's attorney fees and costs totaling \$3,685.95. The court further held, "Pursuant to Supreme Court Rule 403(a) [*sic*], this is a final Order and there is no just reason to delay enforcement or appeal." On September 9, 2008, the defendants filed a notice of appeal.

As a threshold matter, we must address the issue of this court's jurisdiction to entertain this appeal. See *Archer Daniels Midland Co. v. Barth*, 103 Ill. 2d 536, 539 (1984) ("[A] reviewing court has a duty to consider its jurisdiction and to dismiss the appeal if it determines that jurisdiction is wanting"). In the jurisdictional statement in their brief, the defendants cite to Illinois Supreme Court Rule 304(a) (210 Ill. 2d R. 304(a)) as the jurisdictional basis of this appeal. Illinois Supreme Court Rule 304(a) provides, in part, as follows:

"If multiple parties or multiple claims for relief are involved in an action, an appeal may be taken from a final judgment as to one or more but fewer than all of the parties or claims only if the trial court has made an express written finding that there is no just reason for delaying either enforcement or appeal or both." 210 Ill. 2d R. 304(a).

In this case, we recognize that the circuit court's order granting the Village's motion for attorney fees and costs stated that it was a final order and contained the language required by Illinois Supreme Court Rule 304(a). We also recognize that a claim for attorney fees and costs is a claim for relief within the meaning of Rule 304(a), whether the fees are sought pursuant to a statute, as in the case at bar, or pursuant to a contractual provision. *Brown & Kerr, Inc. v. American Stores Properties, Inc.*, 306 Ill. App. 3d 1023, 1028 (1999). However, these determinations do not resolve the issue of this court's jurisdiction to hear this appeal. "Just because an order contains the required language under Rule 304(a) does not make an otherwise nonfinal order appealable." *Coryell v. Village of La Grange*, 245 Ill. App. 3d 1, 5 (1993). "A judgment is final if it disposes of some definite or separate part of the controversy." *Coryell*, 245 Ill. App. 3d at 5. Accordingly, we must consider whether the order from which the defendants appeal finally disposes of the Village's claim for attorney fees and costs.

Section 11-31-1 of the Code (65 ILCS 5/11-31-1 (West 2006)) provides a procedure by which a municipality can petition the circuit court for the demolition of a building that is in an unsafe condition, and the statute allows for the recovery of the costs of enforcing the Code in this manner, including costs and attorney fees. Although the Village's motion for attorney fees and costs states that the defendants have sold the building in question, it appears that the Village's petition for demolition is still pending. The Village has not filed a motion to voluntarily dismiss the petition for demolition, the defendants have not filed a

motion to dismiss the petition based on the sale of the subject property, and the circuit court has not entered an order dismissing the petition. Although the Village's motion for attorney fees and costs states that the defendants sold the subject property and it would seem that there is nothing left to be resolved on the Village's petition for demolition, we decline to make this assumption when it appears on the record that the petition for demolition remains pending.

Although the motion for attorney fees and costs is a separate claim from the petition for demolition, we find that until the petition for demolition is finally resolved on the record, by a dismissal or otherwise, any order granting the Village its attorney fees and costs based on the enforcement of section 11-31-1 of the Code is not final because a potential remains that the Village would seek further attorney fees and costs associated with the petition for demolition. In fact, at oral argument, counsel for the Village admitted there is that potential. For these reasons, we find that the circuit court's order does not finally dispose of the Village's claim for attorney fees and costs, and jurisdiction is therefore lacking under Illinois Supreme Court Rule 304(a) (210 Ill. 2d R. 304(a)).

In their suggestions in support of appellate jurisdiction, the defendants contend, "[I]t seems reasonable to view the circuit court's statement of finality in the order appealed as an implicit denial or dismissal of the petition for demolition." We reject this argument. The language of the circuit court's order did not dispose of the petition for demolition. Although it does seem as if the petition for demolition is resolved based on the Village's statement in its motion for attorney fees and costs that the defendants sold the subject property, we are not at liberty to make this assumption absent a formal dismissal of the petition.

In sum, we hold that appellate jurisdiction is improper under Rule 304(a) (210 Ill. 2d R. 304(a)) because the circuit court's order granting the Village's motion for attorney fees and costs is not final, even with regard to the Village's claim for attorney fees and costs, because

the underlying petition for demolition remains pending and there remains a potential for further fees and costs to be assessed. For these reasons, this appeal is dismissed for a lack of appellate jurisdiction pursuant to Supreme Court Rule 23(c)(1) (166 Ill. 2d R. 23(c)(1)).

Appeal dismissed.

SPOMER, J., with GOLDENHERSH and CHAPMAN, JJ., concurring.

NOTICE

The text of this order may be changed or corrected prior to the time for filing of a Petition for Rehearing or the disposition of the same.

NO. 5-08-0468

IN THE
APPELLATE COURT OF ILLINOIS
FIFTH DISTRICT

FILED
AUG 24 2009
JOHN J. FLOOD
CLERK APPELLATE COURT, 5TH DIST.

THE VILLAGE OF FREEBURG,
a Municipal Corporation,

Plaintiff-Appellee,

v.

C and S, LTD., a Limited Partnership,
PHIL SHEETS, and SHEETS ENTERPRISES,
LTD., a Limited Partnership, Successor in
Interest of C and S, Ltd., a Limited Partnership,

Defendants-Appellants.

) Appeal from the
) Circuit Court of
) St. Clair County.

) No. 07-MR-94

) Honorable
) Andrew J. Gleeson,
) Judge, presiding.

RECEIVED

AUG 31 2009

SUMMARY ORDER

The defendants, C and S, Ltd., Phil Sheets, and Sheets Enterprises, Ltd., appeal the order of the circuit court of St. Clair County, which granted the motion for attorney fees and costs filed by the plaintiff, the Village of Freeburg (the Village). For the following reasons, we dismiss the appeal for a lack of appellate jurisdiction, pursuant to Illinois Supreme Court Rule 23(c)(1) (166 Ill. 2d R. 23(c)(1)).

On April 2, 2007, the Village filed a petition, pursuant to section 11-31-1(a) of the Illinois Municipal Code (the Code) (65 ILCS 5/11-31-1(a) (West 2006)), for the demolition of a structure belonging to the defendants, which was located at 2 South Monroe in Freeburg. An amended petition for demolition was filed on April 26, 2007. On February 25, 2008, the Village filed a motion for attorney fees and costs, which the Village claimed were recoverable as expenses incurred by the Village in its efforts to enforce the Code pursuant to the language of section 11-31-1. The motion stated that in December 2007, the defendants

voluntarily demolished the building at issue, rather than proceeding to trial. The Village requested \$4,505.38, plus any additional attorney fees and costs incurred by the Village in connection with the case between January 31, 2008, and the entry of an order by the circuit court. The motion also requested that the circuit court authorize the Village to record a notice of lien for the amount of fees and costs assessed against the defendants and that the circuit court retain jurisdiction over this matter for the purposes of foreclosing that lien. On April 3, 2008, the Village filed a separate petition to retain jurisdiction for foreclosure proceedings and a notice of lien reiterating the requests previously stated in the motion for attorney fees and costs.

On April 8, 2008, the circuit court entered an order that, *inter alia*, granted the Village \$4,505.38 for attorney fees and costs and granted the Village's petition to retain jurisdiction. On April 28, 2008, the defendants filed a motion to reconsider, vacate, and set aside the order. On August 11, 2008, the circuit court entered an order denying the defendants' motion to reconsider, vacate, and set aside. The circuit court ordered the defendants to pay the Village's attorney fees and costs totaling \$8,047.15. The court further held, "Pursuant to Supreme Court Rule 403(a) [*sic*], this is a final Order and there is no just reason to delay enforcement or appeal." On September 9, 2008, the defendants filed a notice of appeal.

As a threshold matter, we must address the issue of this court's jurisdiction to entertain this appeal. See *Archer Daniels Midland Co. v. Barth*, 103 Ill. 2d 536, 539 (1984) ("[A] reviewing court has a duty to consider its jurisdiction and to dismiss the appeal if it determines that jurisdiction is wanting"). In the jurisdictional statement in their brief, the defendants cite to Illinois Supreme Court Rule 304(a) (210 Ill. 2d R. 304(a)) as the jurisdictional basis of this appeal. Illinois Supreme Court Rule 304(a) provides, in part, as follows:

"If multiple parties or multiple claims for relief are involved in an action, an

appeal may be taken from a final judgment as to one or more but fewer than all of the parties or claims only if the trial court has made an express written finding that there is no just reason for delaying either enforcement or appeal or both." 210 Ill. 2d R. 304(a).

In this case, we recognize that the circuit court's order granting the Village's motion for attorney fees and costs stated that it was a final order and contained the language required by Illinois Supreme Court Rule 304(a). We also recognize that a claim for attorney fees and costs is a claim for relief within the meaning of Rule 304(a), whether the fees are sought pursuant to a statute, as in the case at bar, or pursuant to a contractual provision. *Brown & Kerr, Inc. v. American Stores Properties, Inc.*, 306 Ill. App. 3d 1023, 1028 (1999). However, these determinations do not resolve the issue of this court's jurisdiction to hear this appeal. "Just because an order contains the required language under Rule 304(a) does not make an otherwise nonfinal order appealable." *Coryell v. Village of La Grange*, 245 Ill. App. 3d 1, 5 (1993). "A judgment is final if it disposes of some definite or separate part of the controversy." *Coryell*, 245 Ill. App. 3d at 5. Accordingly, we must consider whether the order from which the defendants appeal finally disposes of the Village's claim for attorney fees and costs.

Section 11-31-1 of the Code (65 ILCS 5/11-31-1 (West 2006)) provides a procedure by which a municipality can petition the circuit court for the demolition of a building that is in an unsafe condition, and the statute allows for the recovery of the costs of enforcing the Code in this manner, including attorney fees and costs. Although the Village's motion for attorney fees and costs states that the defendants have demolished the subject property, it appears that the Village's petition for demolition is still pending. The Village has not filed a motion to voluntarily dismiss the petition for demolition, the defendants have not filed a motion to dismiss the petition based on the voluntary demolition of the subject property, and

the circuit court has not entered an order dismissing the petition. Although the Village's motion for attorney fees and costs states that the defendants voluntarily demolished the subject property and it would seem that there is nothing left to be resolved on the Village's petition for demolition, we decline to make this assumption when it appears on the record that the petition for demolition remains pending.

Although the motion for attorney fees and costs is a separate claim from the petition for demolition, we find that until the petition for demolition is finally resolved on the record, by a dismissal or otherwise, any order granting the Village its attorney fees and costs based on the enforcement of section 11-31-1 of the Code is not final because the potential remains that the Village would seek further attorney fees and costs associated with the petition for demolition. In fact, at oral argument, counsel for the Village admitted there is that potential. For these reasons, we find that the circuit court's order does not finally dispose of the Village's claim for attorney fees and costs, and jurisdiction is therefore lacking under Illinois Supreme Court Rule 304(a) (210 Ill. 2d R. 304(a)).

In their suggestions in support of appellate jurisdiction, the defendants contend, "[I]t seems reasonable to view the circuit court's statement of finality in the order appealed as an implicit denial or dismissal of the petition for demolition." We reject this argument. The language of the circuit court's order did not address the disposition of the petition for demolition. Although it does seem as if the petition for demolition is resolved based on the Village's statement in its motion for attorney fees and costs that the defendants sold the subject property, we are not at liberty to make this assumption absent a formal dismissal of the petition.

In sum, we hold that appellate jurisdiction is improper under Rule 304(a) (210 Ill. 2d R. 304(a)) because the circuit court's order granting the Village's motion for attorney fees and costs is not final, even with regard to the Village's claim for attorney fees and costs, because

the underlying petition for demolition remains pending and there remains a potential for further fees and costs to be assessed. For these reasons, this appeal is dismissed for a lack of appellate jurisdiction pursuant to Supreme Court Rule 23(c)(1) (166 Ill. 2d R. 23(c)(1)).

Appeal dismissed.

SPOMER, J., with GOLDENHERSH and CHAPMAN, JJ., concurring.