

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

ROBERT PETERSON and)
LEIBUNDGUTH STORAGE)
& VAN SERVICE, INC.)

Plaintiffs,)

v.)

Civil Action No. 14-cv-9851

VILLAGE OF DOWNERS GROVE,)
ILLINOIS, an Illinois municipal)
corporation)

Honorable Edmond E. Chang

Defendant.)

**DEFENDANT’S REPLY TO PLAINTIFF’S RESPONSE TO DEFENDANT’S
STATEMENT OF FACTS IN SUPPORT OF ITS MOTION FOR SUMMARY
JUDGMENT AND RESPONSE TO PLAINTIFF’S STATEMENT OF FACTS**

NOW COMES Defendant, VILLAGE OF DOWNERS GROVE, ILLINOIS, an Illinois municipal corporation, by and through its attorneys, DAY & ROBERT, P.C., and pursuant to Fed. R. Civ. P. 56(a) and Local Rule 56.1(a) respectfully submits the following replies to Plaintiff’s Responses to various Statements of Facts made by Plaintiff in support of its Motion for Summary Judgment:

I. THE VILLAGE SIGN REGULATIONS

1. A true and accurate copy of the Certification Affidavit of Village Clerk, April K. Holden, certifying all of the Village of Downers Grove (“Village”) documents numbered and attached to this Statement of Uncontested Material Facts, attached hereto as **Exhibit 1**.¹

Response: Undisputed.²

¹ Public records of the Village, including all legislative and commission, committee and staff records to the board and commissions and committees are excluded from the rule against hearsay. Fed. R. Ev. 803(8), and are self-authenticating. Fed. R. Ev. 902(4).

Reply: None.

2. A true and accurate certified copy of the Village sign ordinance in effect as of the filing of Plaintiffs' Verified First Amended Complaint ("Complaint") (Dkt. 10) (and incorporated as Exhibit A into said Complaint) is attached hereto as **Exhibit 2** (the "sign ordinance").

Response: Undisputed.

Reply: None.

3. The adopted purpose of the sign ordinance is found in Section 9.010, and states as follows:

The sign regulations of this article are established to create a comprehensive but balanced system of sign regulations to promote effective communication and to prevent placement of signs that are potentially harmful to motorized and non-motorized traffic safety, property values, business opportunities and community appearance. This article is adopted for the following specific purposes:

1. To preserve, protect and promote public health, safety and welfare;
2. To preserve the value of private property by assuring the compatibility of signs with surrounding land uses;
3. To enhance the physical appearance of the village;
4. To enhance the village's economy, business and industry by promoting the reasonable, orderly and effective display of signs, and encouraging better communication between an activity and the public it seeks with its message;
5. To protect the general public from damage and injury, that may be caused by the faulty and uncontrolled construction and use of signs within the village;

² Plaintiff notes that contrary to Local Rule 56.1(a)(3)(A)-(B), Defendant's Statement of Facts does not include a description of the parties and all facts supporting venue and jurisdiction in this court.

6. To protect motorized and non-motorized travelers by reducing distraction that may increase the number and severity of traffic accidents; and

7. To encourage sound practices and lessen the objectionable effects of competition with respect to size and placement of street signs.

(Ex. 2, § 9.010.A).

Response: Undisputed except that Plaintiff disputes that all the provisions of the sign ordinance serve these purposes. (See Plaintiff's Memorandum of Law, generally).

Reply: The purposes of the sign ordinance stand undisputed by Plaintiff. There is no constitutional or other obligation under case law that each stated purpose be served by each individual sign regulation.

4. The sign ordinance regulates every sign in the Village, and there are no signs permitted which are "exempt" (categorically or otherwise) from the sign ordinance. (Ex. 2, § 9.010.B). The sole exemption from any portion of any of the Village sign regulations relates to the necessity of filing for a sign permit. (Ex. 2, § 9.080). Certain signs are allowed without first obtaining a sign permit from the Village, (Ex. 2, § 9.030), but even the signs that may be posted without first obtaining a permit are nevertheless subject to both the applicable prohibitions and size regulations within the sign ordinance. (Ex. 2, § 9.030). No sign is exempt from the sign ordinance. (Ex. 2, § 9.010.B).

Response: Plaintiff does not dispute that all signs are subject to the sign ordinance and no sign is exempt from the sign ordinance; however, some signs are not required to meet certain provisions of the sign ordinance, either explicitly in the text of the sign ordinance or as the result of action taken by the Village. (Def. Ex. 2, Sign Ordinance § 9.030.) Plaintiff does not

dispute that the Village does not require a sign permit for certain signs. Signs that may be posted with first obtaining a permit are subject to different size and number requirements than signs that may be posted only after obtaining a permit. (Def. Ex. 2, Sign Ordinance § 9.030.) The prohibitions and size and number regulations of signs that do not require a permit are, in some cases, different depending on the content of the sign. (Def. Ex. 2, Sign Ordinance § 9.030.)

Reply: It stands undisputed by Plaintiff that all signs are subject to the sign ordinance and no signs are exempt from the sign ordinance. The text of the sign ordinance speaks for itself and is not disputed by Plaintiff. (Dkt. 37, Def. SOF, Ex. 2, sign ordinance).

5. Section 9.020 of the sign ordinance which addresses signs painted directly onto a wall was amended on July 21, 2015, a true and accurate certified copy of Ordinance No. 5472 is attached hereto as **Exhibit 3**, which was processed with a Village staff report, a true and accurate certified copy of which is attached hereto as **Exhibit 4**. The Village Council incorporated additional findings relating to the purpose behind this recent amendment, stating:

1. Signs painted directly onto a wall, fence, or roof create a greater upkeep and maintenance problem than signs separately manufactured and hung or affixed to a wall, fence or roof, and such signs face increased fading, chipping, deterioration, loss of visibility, brick fracture, and other visual deterioration.
2. Signs painted directly onto a wall, fence, or roof present far more demanding and difficult methodology for removal than signs separately hung or affixed to a wall, fence, or roof, and whether by sand blasting, chemical removal, paint over or other method of obliteration, the after effects of removal of such signs painted directly onto a wall, fence, or roof often leave residual ghost signs, discolored building surfaces or other undesirable visual blight detrimental to the appearance of the Village.
3. Permitting signs painted directly onto a wall, fence, or roof would allow hand painted spray paint messages to lawfully

exist on walls, fences, and roofs, which would cripple the enforcement ability of the Village to eradicate graffiti, and would legalize the very visual blight that the Village has been fighting for the past decade to eradicate.

4. Through enforcement efforts and the imposition of a decade long amortization schedule, nearly 100% of signs painted directly onto a wall, fence, or roof have been eradicated, and broadening the prohibition of signs painted directly onto a wall, fence, or roof to include the DB, DT, and Fairview business district will create a uniform rule to protect against the visual detriments of such signs, while leaving ample opportunities to post a multitude of code compliant signs throughout the Village.

(Ex. 3).

Response: Undisputed except that Plaintiff disputes the accuracy of the additional findings relating to the purpose behind the amendment listed in the Ordinance. (See Plaintiff's Memorandum of Law, Section I.A.)

Reply: The July 21, 2015 amendment to Section 9.020 of the sign ordinance and the text and the fact that the Village made findings within Ordinance No. 5472 stand undisputed. Plaintiff has disclosed no evidence or basis to suggest the findings are not accurate. (Dkt. 37, Def. SOF, Ex. 3, Ordinance No. 5472).

6. Section 9.020.P now prohibits any sign painted directly on a wall, roof, or fence everywhere in the Village. (Ex. 3, § 9.020). Thus, regardless of the content of the sign, and regardless of the zoning district, the Village sign regulations prohibit signs painted directly onto a wall. (Ex. 3, § 9.020.P). It does not matter if the sign is political, non-commercial, governmental, commercial memorial, or any other category or type of sign, nor is the text, message or content relevant as the Village sign ordinance prohibits signs painted directly onto a wall. (Ex. 3, § 9.020.P).

Response: Plaintiff does not dispute that Section 9.020(P) now prohibits any sign painted directly on a wall, roof, or fence everywhere in the Village, except that flags or murals painted on buildings are permitted by the sign ordinance on the basis that they are decorative. (Def. Ex. 4, Report of Plan Commission, July 6, 2015, at 3.) Plaintiff does not dispute that the prohibition on signs painted directly on a wall, roof, or fence applies to both commercial and noncommercial signs, except for flags and murals. Therefore, Plaintiff disputes the remaining facts listed in Paragraph 6.

Reply: It stands undisputed that painted signs are now prohibited throughout the Village and the prohibition applies to both commercial and non-commercial signs. (Dkt. 37, Def. SOF, Ex. 3, Ordinance No. 5472). If a flag or mural meets the definition of a sign as defined in Section 15.220 of the Village zoning ordinance (Dkt. 40, Pl. SOF, Ex. E, zoning ordinance), then Section 9.020.P would apply and prohibit the flag or mural from being painted on a wall, roof or fence everywhere in the Village. There is no exception for a flag or mural if it constitutes a “sign” as defined under the Village zoning ordinance.

7. Section 9.050 regulates commercial signs, (Ex. 2 § 9.050) and Section 9.050.A is a commercial sign size limitation. (Ex. 2, § 9.050.A). Section 9.050.A permits up to 1.5 sq. ft. of commercial signage per linear foot of tenant frontage, not to exceed collectively 300 sq. ft. per tenant. (Ex. 2, § 9.050.A).

Response: Undisputed.

Reply: None.

8. Section 9.050.C is a limitation on the number of commercial wall signs permitted based upon the number of tenants having frontage along a public roadway or drivable right-of-way (Ex. 2, § 9.050.C.1).

Response: Undisputed.

Reply: None.

9. Section 9.050.C of the sign ordinance in relation to commercial wall signs was amended on July 21, 2015 by Ordinance No. 5472 to allow one additional commercial wall sign to face the BNSF railroad right-of-way for lots with frontage along the BNSF railroad right-of-way, which includes Leibundguth's property. (Ex. 3). The Village Council incorporated additional findings relating to the purpose behind this recent amendment, stating:

1. The Village sign regulations currently permit multiple signs facing the BNSF rail corridor, but wall signs are required to be posted so as to face a drivable right of way or public roadway so as to assure that the wayfinding safety function of wall signs can be fulfilled by making such signs visible to motorists attempting to locate their destination.
2. While monument signs, projection signs, window signs, and other signs are currently permitted facing the BNSF rail corridor, wall signs are not permitted by the current sign regulations.
3. Many properties along the BNSF corridor have structures which were built at a time when rear yard set back requirements of the Village Code permitted the structures to be at or near the BNSF property line, thus leaving inadequate rear yard for posting signs which are compliant with the current code provisions.
4. By permitting wall signs which face the BNSF, the Village will be providing broader opportunities for signage to those properties with frontage on the rail corridor, while maintaining consistency with the established policy of the Village to permit a broad variety of signage along the rail corridor.
5. By recognizing the additional frontage of the BNSF for purposes of allowing additional wall signs, the amendment will nevertheless maintain the drivable right of way and public road frontage as permitting wall signs facing such frontages and thus the amendment will not detract from the

regulations which encourage the traffic safety function of wayfinding signs visible to drivers along those roadways.

6. By maintaining the gross signage limit of 300 SF per property as well as the limit on the number of signs per tenant frontage, the amendment will still prohibit the unconstrained proliferation of signage and the accompanying visual blight, and the amendment will still require competitive balance by prohibiting one property owner from over signing their property to the detriment of neighboring property values or neighboring business interests.

(Ex. 3).

Response: Undisputed except that Plaintiff disputes the accuracy of the additional findings relating to the purpose behind the amendment listed in the Ordinance. Plaintiff additionally states that the amendment to Section 9.050(C) limits the size of a wall sign with frontage along the BNSF railroad right-of-way to 1.5 square feet per lineal foot of tenant footage. (Def. Ex. 2, Sign Ordinance, Sec. 9.050(C)(5).)

Reply: The text of the July 21, 2015 amendment to Section 9.050.C of the sign ordinance and the fact that the Village made findings within Ordinance No. 5472 stand undisputed. Plaintiff has disclosed no evidence or basis to suggest the findings are not accurate. (Dkt. 37, Def. SOF, Ex. 3, Ordinance No. 5472).

10. The sign ordinance permits “Vehicle signs...when the vehicle to which the sign is attached is licensed, insured, and operational. The vehicle must be used for the operation of the business and may not remain stationary for an extended period of time for the purpose of attracting attention to a business.” (Ex. 2, § 9.030.N).

Response: Undisputed.

Reply: None.

11. The sign ordinance permits Heritage Signs but only in the DB, DT or Fairview Concentrated Business District. However, in order to be deemed a Heritage Sign the owner of the sign must provide conclusive evidence to the community development director that the sign was in place before January 1, 1965. (Ex. 2, § 9.060).

Response: Undisputed.

Reply: None.

12. The sign ordinance permits Leibundguth Storage & Van Service, Inc. (“Leibundguth”) to display many different types of commercial signs which it has elected not to display, including a monument sign, window signs, projection signs and a shingle sign. (Ex. 2; § 9.050)

Response: Undisputed.

Reply: None.

II. VILLAGE PROCEDURES FOR IMPOSING SIGN REGULATIONS

13. The Village began consideration of a major rewrite of the Village sign regulations in May of 2004. (Ex. 1, #4395-4401 @ 4400). The motivation expressed by the Village Economic Development Commission was to reconcile the conflict between regulations which were business friendly and the visual environment of the Village. (Ex. 1, #4395-4401 @ 4400).

Response: Undisputed.

Reply: None.

14. Between 2004 and May of 2005, the process implemented by the Village involved:

- a. Initial study of the sign regulations by the Economic Development Strategic Planning Subcommittee. (Ex. 1, #4404-4412 @ 4405).

- b. Gathering 180 photographs of existing signage problems in the Village and nearby communities. (Ex. 1, #4505-4615).
- c. The Village staff was directed to study the sign regulations of nearby communities (Ex. 1, #2-7 @ 7; #8-18 @14).
- d. The Village staff study of sign regulations included review of the sign regulations of nine nearby communities. (Ex. 1, #3652-3653; #4012-4356).
- e. 400 letters were prepared and sent to Village businesses addressing the review underway. (Ex. 1, #4418-4420 @ 4420).
- f. Formation of a Joint Commission and Sign Subcommittee made up of members of the Planning Commission and the Economic Development Commission. (Ex. 1, #4421-4424 @ 4422).
- g. 18 weeks of regular meetings of the Joint Commission and Sign Subcommittee. (Ex. 1, #4425-4439 @ 4425).
- h. Photographic studies of signs in LaGrange, Lisle, Naperville and Charlevoix, Michigan (Ex. 1, #4508-4615) and signs throughout Downers Grove. (Ex. 1, #4637-4718).
- i. Input was sought and received from the Downers Grove Downtown Management Board (Ex. 1, #606-608 @ 607) and the Downers Grove Chamber of Commerce. (Ex. 1, #581-583 @ 582).
- j. Formal public hearings were conducted by the Planning Commission with input from community individuals and businesses on February 21, 2005 (Ex. 1, #686-701) and again on February 28, 2005. (Ex. 1, #703-723).

- k. The first reading of the proposed text amendment was completed by the Village Council on April 25, 2005 (Ex. 1, #742-747), and the second reading on May 3, 2005 (Ex. 1, #748-754), with the final vote of approval on May 23, 2005 (Ex. 1, #762-764).

Response: Undisputed.

Reply: None.

15. With the adoption of the new sign regulations in May of 2005, the Village afforded a seven-year amortization period to allow businesses a reasonable period of time to continue to use non-conforming signs. (Ex. 1, #762-764 w/Ordinance #4668 “An Ordinance Amending Sign Provisions”).

Response: Undisputed.

Reply: None.

16. In May of 2012, the Village extended the amortization schedule to afford two additional years of extended use of signs rendered non-conforming by the 2005 amendments to the sign regulations. (Ex. 1, Report for the Village Council Meeting, 02/14/12 w/Ordinance #5251 “An Ordinance Regulating Non-Conforming Signs”).

Response: Undisputed.

Reply: None.

17. As of October 2014, Village staff prepared a report itemizing the impact of the sign ordinance which included the following: (Ex. 1, #4358-4385).

- a. As of October 2014, over 95% of properties in the Village with signs were in compliance with the Village sign ordinance. (Ex. 1, #4358-4385 @ 4360, 4365).

- b. 73 properties which were not then in conformity with the sign ordinance were in the process of correcting or eliminating their non-conforming signs. (Ex. 1, #4358-4385 @ 4365).
- c. Only 38 property owners in the Village had failed to take any steps to eliminate non-conforming signs. (Ex. 1, #4358-4385 @ 4360, 4365).
- d. Before and after photographs were included evidencing the visual aesthetics of the signs eliminated and the code-compliant signs which replaced the non-conforming signs. (Ex. 1, #4358-4385 @ 4373-4385).

Response: Undisputed.

Reply: None.

18. As of the date of this filing, Leibundguth is the last property located within the entire Village with a commercial sign painted directly onto a brick wall. (Ex. 5, Peterson Dep., 55:15-24; 56:1-4).

Response: Undisputed.

Reply: None.

III. DEPOSITION TRANSCRIPTS

19. True and accurate copies of the deposition transcripts are attached hereto for the following individuals: Robert E. Peterson (March 19, 2015) (**Exhibit 5**); Dr. Charles R. Taylor (May 7, 2015) (**Exhibit 6**); Stanley J. Popovich (March 18, 2015) (**Exhibit 7**); Patrick Ainsworth (March 18, 2015) (**Exhibit 8**); and N.J. "Pete" Pointner (June 2, 2015) (**Exhibit 9**).

Response: Undisputed.

Reply: None.

III. LEIBUNDGUTH'S SIGNS

19. Contrary to the Complaint, Leibundguth Storage & Van Service, Inc. did not exist as a business entity until 1964. (Illinois Secretary of State Corporation File Detail Report attached hereto as **Exhibit 10**; Ex. 5, Peterson Dep., 14:21-24; 15:1-5). Contrary to the Complaint, Peterson does not have any knowledge of the name of the business prior to the 1964 incorporation. (Ex. 5, Peterson Dep., 15:6-11).

Response: The Village identifies a minor error in the Complaint, which states that Leibundguth “began in 1928 and was incorporated in 1965.” (Dkt. 10, Am. Compl. ¶ 11.) As the Village states – and Plaintiff does not dispute – it appears that Leibundguth was actually incorporated in 1964 rather than 1965. Plaintiff disputes that Peterson does not have any knowledge of the name of the business prior to the 1964 incorporation. Mr. Peterson testified that he assumed that the name of the business in 1928 was Leibundguth Moving & Storage, but said he did not know what the name was in 1928. (Def. Ex. 5, Peterson Dep., 15:6-11.)

Reply: Plaintiff has specifically plead that “Leibundguth Storage & Van Service, Inc.” has existed in Downers Grove since 1928 (Dkt. 10, Compl. ¶ 1). This is false, as Plaintiff’s response admits the entity was not incorporated until 1964, so no “Inc.” could have existed prior to 1964. Peterson also specifically admitted he did not know the name of the business in 1928 (Dkt. 37, Def. SOF, Ex. 5, Peterson Dep., 15:6-11), and his “assumption” is not asserted by the Village to be undisputed.

20. Contrary to the Complaint, when the Plaintiff’s 400 sq. ft. sign painted on the back of the building was first created, (Am. Compl., ¶ 1) it advertised Leibundguth’s affiliation with Trans American Van Movers, not Wheaton World Wide Movers (Ex. 5, Peterson Dep., 21:18-23). Contrary to the Complaint, Peterson has no knowledge of when the 400 sq. ft. sign was painted onto the brick wall facing the rail corridor. (Ex. 5, Peterson Dep., 36:10-24; 37:1-18).

Response: Plaintiff does not dispute that prior to advertising Leibundguth's relationship with "Wheaton World Wide Movers," the 400 square foot sign painted on the back of the building advertised Leibundguth's affiliation with Trans American Van Movers. Plaintiff disputes that this is contrary to the Complaint. Paragraph 1 of the Amended Complaint states:

Leibundguth Moving & Storage Inc. ("Leibundguth"), which has existed in Downers Grove, Illinois, since 1928, has had a sign painted on the back of its brick building advertising its business to train passengers for over 70 years, as shown in the photo below...

(Dkt. 10, Am. Compl. ¶ 1.) Plaintiff does not dispute that Peterson does not know exactly when the sign on the brick wall of the building was painted, but disputes that this is contrary to the Complaint. (Dkt. 10, Am. Compl. ¶ 1.)

Reply: Notwithstanding Plaintiff's response, it cannot be disputed that the sign depicted in paragraph 1 of the Complaint was not there in 1928 (Dkt. 10, Compl. ¶ 1), the sign as depicted could not have existed before 1987 because that is when Wheaton Van Lines changed its logo to Wheaton World Wide Moving (Dkt. 37, Def. SOF, Ex. 5, Peterson Dep., Ex. 10 PageID #2309), and Peterson admitted he does not know exactly when it was painted though he assumes it was after 1987 when the logo changed. (Dkt. 37, Def. SOF, Ex. 5, Peterson Dep., 37:7-18; 88:1-24, 89:1-15). This is contrary to the Complaint which clearly suggests the painted rear sign depicted in the photograph in the Complaint (Dkt. 10, Compl. ¶ 1) has been in place and existed for over 70 years, or at least as of January 1, 1965 so it should be treated as a "heritage sign" and thus allowed under the sign ordinance. (Dkt. 10, Compl. ¶¶ 16, 57, 58).

21. Contrary to the Complaint (Compl., ¶ 2), the Village inspected the property in 1977, and placed Leibundguth on written notice that the then existing signs on the property were non-conforming with the Village sign regulations in that Leibundguth had one sign painted

directly onto the face brick (front of the building) and the total sign area of the two wall signs (only two signs are reported, not four signs as pleaded) exceeded the allowable square footage. (Ex. 5, Peterson Dep., Ex. 12). The signs photograph as of 1977 displayed neither Trans American World Wide Movers nor Wheaton World Wide Movers. (Ex. 5, Peterson Dep., Ex. 12 (photographs of signs as of 1977)).

Response: Plaintiff does not dispute that the Village inspected the property in 1977. Plaintiff does not dispute that in 1977 the Village inspected the signs on the property and found them non-conforming with the sign ordinance that the Village had just amended at the time. However, the Village also noted that Leibundguth's sign complied with the sign ordinance because they were existing at the time of the amendment (that is, they were allowed because they were grandfathered under the ordinance). (Def. Ex. 5, Peterson Dep., Ex. 12, Page ID #2313-14). Plaintiff does not dispute that the notice stated that Leibundguth had on sign painted directly onto the face brick and the total sign area of the two wall signs exceeded the allowable square footage for new signs at that time. Plaintiff disputes that this is contrary to the Complaint. Paragraph 2 of the Complaint states: "No one has ever complained about the sign to Plaintiffs, nor, upon information and belief, to Downers Grove." (Dkt. 10, Am. Compl. ¶ 2.) Plaintiff disputes that the 1977 inspection and notice constituted a complaint. Plaintiff does not dispute that the pictures taken on the two signs in 1977 did not display Trans American World Wide Movers or Wheaton World Wide Movers. Plaintiff disputes any implication that, because the 1977 report only mentions two signs, the property contained only two signs. Plaintiff notes that the inspection report does not contain any pictures of the back wall of the building. (Def. Ex. 5, Peterson Dep., Ex. 12, Page ID #2313-14.)

Reply: Despite Plaintiff's lengthy response, Plaintiff admits that it is undisputed that the Village inspected the property in 1977, the certified governmental records reflect that Plaintiff was advised that the signs were non-conforming (Dkt. 37, Def. SOF, Ex. 5, Peterson Dep., Ex. 12, PageID #2313) and Plaintiff does not dispute the content and photographs within the 1977 official code enforcement file and notice.

22. Leibundguth was placed on written notice in March of 1977 that any change in the two signs then existing would require that the signs be brought into conformity with the Village sign regulations. (Ex. 5, Peterson Dep., Ex. 12).

Response: Undisputed, but the notice also provided that all permanent signs in conflict with the amended sign ordinance may remain in their present state and may be maintained. (Def. Ex. 5, Peterson Dep., Ex. 12, Page ID #2313-14.)

Reply: None.

23. The name Wheaton World Wide Moving was first adopted by Wheaton Van Lines in 1987. (Ex. 5, Peterson Dep., Ex. 10). Contrary to the Complaint, Peterson changed his painted signs in 1987 to advertise his affiliation with Wheaton World Wide Moving (Ex. 5, Peterson Dep., 42:22-24; 43:1-24; 44:1-19; 88:15-24; 89:1-15).

Response: Undisputed except that Plaintiff disputes that Peterson changed his painted signs in 1987 to advertise his affiliation with Wheaton World Wide Moving. Rather, as the Complaint says and Mr. Peterson indicated in his deposition, he replaced the wall sign on the front of the building, which previously stated Wheaton Van Lines, with a nearly identical sign that said "Wheaton World Wide Moving." Mr. Peterson never indicated that he changed the painted signs after 1987. (Def. Ex. 5, Peterson Dep., 42:22-24; 43:1-24; 44:1-19; 88:15-24; 89:1-15; Dkt. 10, Am. Compl. ¶ 21; Dkt. 12, Ans. ¶ 21.)

Reply: Notwithstanding Plaintiff's response, it cannot be disputed that Peterson admitted to changing the signs on the building after the March, 1977 notice, and the photograph in the 1977 notice does not reflect any sign between the two windows where the current sign was put in place by Plaintiff in 1987. (Dkt. 37, Def. SOF, Ex. 5, Peterson Dep., Ex. 12, PageID #2313-2314; Peterson Dep., 88:5-24, 89:2-15; Dkt. 10, Compl. ¶ 21;). Peterson also admitted that the painted sign on the rear of the building was changed to its existing sign at some time after 1987 when the Wheaton World Wide Moving logo first came into existence. (Dkt. 37, Def. SOF, Ex. 5, Peterson Dep., 88:1-24; 89:1-15).

24. The current painted signs on the front on back of the building changed after 1987 and are thus less than 30 years old. (Ex. 5, Peterson Dep., 89:7-15).

Response: Plaintiff disputes that the painted sign on the front of the building changed after 1987 and that it is thus less than 30 years old. The deposition of Mr. Peterson does not indicate that the painted sign on the front of the building changed at all. Rather, the sign stating "Wheaton World Wide Moving," which is not a painted sign, was updated in 1987 to reflect the name change of that company. (Def. Ex. 5, Peterson Dep., 89:7-15.) Plaintiff also disputes that the painted sign on the back of the building is less than 30 years old. While Plaintiff admitted that a portion of that sign was altered when Leibundguth changed its long distance carrier from Trans American to Wheaton, the rest of the sign stayed the same. (Def. Ex. 5, Peterson Dep., 89:7-15.) Thus, it is simply not correct to say that the sign painted on the back of the building is less than 30 years old.

Reply: The content of the March, 1977 inspection notice and photograph of the painted sign on the front of the building (Dkt. 37, Def. SOF, Ex. 5, Peterson Dep., Ex. 12, PageID #2313-2314) stand undisputed by Plaintiff. A cursory review of the photograph of the

existing front painted wall sign (Dkt. 10, Compl. ¶ 19) reveals it is now larger (taller), now includes the telephone number for the business and deletes the word “and” and also deletes another illegible word at the end of the sign which existed in the 1977 photograph (Dkt. 37, Def. SOF, Ex. 5, Peterson Dep., Ex. 12, PageID #2313-2314), so it cannot have existed “for over 70 years” as alleged by Plaintiff. (Dkt. 37, Def. SOF, Ex. 5, Peterson Dep., 95:24; 96:1-24; 97:1-24; 98:5). The second photograph in the March, 1977 inspection notice reveals that as of 1977 no wall sign even existed between the windows (Dkt. 37, Def. SOF, Ex. 5, Peterson Dep., Ex. 12, PageID #2313-2314) where Plaintiff admits a new sign was installed in 1987 (Dkt. 10, Compl. ¶ 21; Dkt. 37, Def. SOF, Ex. 5, Peterson Dep., 89:2-15, 98:7-23). Plaintiff’s dispute as to the age of the rear sign is belied by its own response as Peterson admitted its content changed after 1987 when Wheaton World Wide Moving came into existence. (Dkt. 37, Def. SOF, Def. Ex. 5, Peterson Dep., 88:15-24; 89:11-15).

25. The 400 sq. ft. sign painted directly onto the brick wall facing the rail corridor is not truthful because it advertises Leibundguth's affiliation with Wheaton World Wide **Movers**, a firm that does not exist. (Ex. 5, Peterson Dep., 45:20-24; 46:1-6). This misnomer was knowingly created by Leibundguth because the sign originally advertised Trans American World Wide Movers, and Leibundguth elected to just paint over Trans American and replace it with Wheaton, without changing the rest of the sign. (Ex. 5, Peterson Dep., 22:8-18).

Response: Plaintiff disputes that the sign painted directly onto the back of the building is not truthful because it advertises Leibundguth’s affiliation with Wheaton World Wide Movers. The sign simply uses an informal variation on the business’s name that could not mislead anyone. There is no company called “Wheaton World Wide Movers” that a person could believe the sign refers to. A reasonable person who is aware of Wheaton World Wide

Moving would assume that the sign refers to that company. Plaintiff admits that the sign along the railway originally advertised Trans American World Wide Movers and that Leibundguth, rather than repaint the entire sign, replaced Trans American with Wheaton. Plaintiff disputes that the misnomer was knowingly created because it appears from his deposition that Bob Peterson, owner of Leibundguth, thought the sign on the back stated the correct name of Wheaton. (Def. Ex. 5, Peterson Dep., 45:18-22; 46:10-15.)

Reply: Notwithstanding Plaintiff's lengthy response, it is undisputed that the existing sign painted on the rear of the building facing the railroad corridor (Dkt. 10, Compl. ¶ 1) advertises Leibundguth's affiliation with a business that does not exist (Dkt. 37, Def. SOF, Ex. 5, Peterson Dep, Ex. 10, PageID #2309), and Peterson admitted it was therefore untruthful. (Dkt. 37, Def. SOF, Ex. 5, Peterson Dep., 46:3-6). What is legally truthful or misleading, and thus speech not entitled to constitutional protection, is a question of law for the Court.

26. Both the content and the size of the hand painted sign on the front of the Leibundguth building have been changed since the 1977 Village notice that **any** change in the Leibundguth signs would require the elimination of non-conformities including size and painted directly onto the face brick. (Ex. 5, Peterson Dep., 22:8-18; 100:7-24; 101:1-14).

Response: Plaintiff disputes that the size and content of the hand painted sign on the front of the building has changed. Indeed, the testimony of Peterson referenced by the deposition transcript does not even address the painted sign on the front of the building. And, in any event, that testimony only states that the sign it refers to was "touched up." (Def. Ex. 5, Peterson Dep., 22:8-18; 100:7-24; 101:1-14.)

Reply: The content of the March, 1977 inspection notice and photographs of the painted signs therein (Dkt. 37, Def. SOF, Ex. 5, Peterson Dep., Ex. 12, PageID #2313-2314)

stand undisputed by Plaintiff. (*See* Pl.’s resp. to #21). A cursory review of the photograph of the existing painted sign on the front of the building (Dkt. 10, Compl. ¶ 19) shows that it was altered after 1977, as it is now larger (taller), now includes the telephone number for the business and deletes the word “and” and also deletes another word at the end of the sign which existed in the 1977 photograph. (Dkt. 37, Def. SOF, Ex. 5, Peterson Dep., Ex. 12, PageID #2313-2314; Peterson Dep., 95:24; 96:1-24; 97:1-24; 98:5).

27. Leibundguth has three trucks with commercial signs advertising their services. Each truck has an 8x12 sign on the back, two 20x12 signs on each side, a sign on each door, and a sign on the front. (Ex. 5, Peterson Dep., Ex. 7; 30:2-24; 31:1-22). The signs on the trucks are visible from the rail corridor (Ex. 5, Peterson Dep., 50:11-15; 125:13-20; 126:14-24; 128:7-16; 129:1-11), and also from the street, and are code-compliant under the Village commercial sign regulations (9.030.N).

Response: Undisputed.

Reply: None.

28. Leibundguth is aware that the Village sign ordinance permits them to post signs that they currently do not post, including window signs, and a monument signs. (Ex. 5, Peterson Dep., 51:1-22; 52:16-18; 53:3-8).

Response: Undisputed.

Reply: None.

29. Peterson has not investigated the extent to which he has other opportunities for alternative means of advertising his commercial messages. (Ex. 5, Peterson Dep., 74:23-24; 75:1-24; 76:1-24; 77:1-24; 78:1-24; 79:1-6).

Response: Plaintiff disputes that Peterson has not investigated the extent to which he has other opportunities for alternative means of advertising his commercial messages. In his deposition, Peterson answered questions about specific alternative means of advertising, many of which he said he had not investigated. But he did testify that he has done some advertising using other means. Peterson also stated that he has made a business decision to limit his advertising. (Def. Ex. 5, Peterson Dep., 74:23-24; 75:1-24; 76:1-24; 77:1-24; 78:1-24; 79:1-6.)

Reply: None.

30. The appearance of Leibundguth's 400 sq. ft. wall sign painted on the brick wall facing the BNSF railroad right-of-way as of July 22, 2015 is as depicted in photographs taken by Village Planner Stanley J. Popovich (Affidavit of Stanley J. Popovich, attached hereto as **Exhibit 11**).

Response: Undisputed.

Reply: None.

31. The certified copies of 33 surrounding Village and municipal sign ordinances are attached hereto as **Exhibit 12**.³

Response: Undisputed.

Reply: None.

32. The 33 different communities within Exhibit 12 were selected by the Village's expert witness, N. J. "Pete" Pointner, who reviewed the sign regulations for each community. (Ex. 9, Pointner Dep., 78:23-24; 79:1-6; 99:1-21).

³ Pursuant to Fed. R. Ev. 201, the Village asks this Court to take judicial notice of the 33 sign ordinances as legislative enactments of the 33 communities, each of which is submitted along with the respective certification of accuracy and the fact that the document is an official public record of the community involved, and as such each is self-authenticated under Fed. R. Ev. 902(4).

Response: Plaintiff does not dispute that Exhibit 12 contains 33 communities selected by Mr. Pointner. Plaintiff disputes that Mr. Pointner reviewed the sign regulations for each community. (Def. Ex. 9, Pointner Dep., 102:14-18.) Mr. Pointner testified that he did not look at any of the other municipalities' ordinances to determine whether they allowed a wall sign to be along the frontage of a rail right of way (Def. Ex. 9, Pointner Dep., 101:6-10), nor did he look at the purposes listed in the sign ordinances of all 33 communities he purportedly reviewed. (Def. Ex. 9, Pointner Dep., 110:3-14.)

Reply: It stands undisputed that Mr. Pointner selected the 33 communities, and he testified he reviewed the sign regulations for each community. (Dkt. 37, Def. SOF, Ex. 9, Pointner Dep., 78:23-24; 79:1-6; 99:1-21; 111:1-24; 112:1-3; 138:4-11). The Village submits that when his testimony is reviewed in its entirety, the specific excerpts cited by Plaintiff do not create a legitimate recognized dispute of fact.

33. Out of 33 communities studied, 26 prohibit signs painted directly on a wall, 31 out of 33 restrict the gross size of signage per parcel, and 31 out of 33 limit the number of wall signs permitted. (Ex. 12; and summary chart attached hereto as **Exhibit 13**).

Response: Undisputed.

Reply: None.

34. **Exhibit 14**⁴ is a compilation of four publications that exist and contain content addressing how sign regulations may impact traffic safety and community aesthetics, and include the following:

⁴ Judicial notice of the existence of the published content of the materials within Exhibit 14 is requested in accordance with Fed. R. Ev. 201.

- a. Douglas Mace, *On-Premise Signs and Traffic Safety in Context-Sensitive Signage Design* 9, (Marya Morris et al. ed., Am. Planning Ass'n, June 2001);
- b. Int'l Sign Ass'n, *Building Stronger Communities – Working Together to Create Reasonable Sign Codes*, (January, 2012);
- c. Philip M. Garvey et al., Penn. Transportation Inst., *Sign Visibility Literature Review Final Report*, (December 1995);
- d. Daniel Mandelker et al., *Street Graphics and the Law*, Rev. Ed. in Planning Advisory Service Report Number 527 (Am. Planning Ass'n, 2004).

Response: Plaintiff does not dispute that Exhibit 14 is a compilation of four publications that exist and contain content addressing how sign regulations may impact traffic safety and community aesthetics. Plaintiff disputes that such publications are relevant to the safety and community aesthetics issues raised in this case. Plaintiff also disputes that the publications are admissible for the truth of what they assert. (See Plaintiff's Memorandum of Law, Section I.B.2.a.)

Reply: Plaintiff admits to the existence and content of the four publications, and as a matter of law, they are relevant to the issues in this case. (*Dima Corporation v. Town of Hallie*, 185 F.3d 823 (7th Cir. 1999)).

Defendant's Responses to Plaintiff's Combined Local Rule 56.1(a)(3) Statement of Facts in Support of its Motion to Dismiss and Local Rule 56.1(b)(3)(C) Statement of Additional Facts Requiring the Denial of Defendant's Motion for Summary Judgment

NOW COMES Defendant, VILLAGE OF DOWNERS GROVE, ILLINOIS, an Illinois municipal corporation, by and through its attorneys, DAY & ROBERT, P.C., and pursuant to Fed. R. Civ. P. 56(a) and Local Rule 56.1(a) respectfully submits the following responses to Plaintiff's Combined Local Rule 56.1(a)(3) Statement of Facts in Support of Its Motion for

Dismiss and Local Rule 56.1(b)(3)(C) Statement of Additional Facts Requiring the Denial of Defendant's Motion for Summary Judgment:

The Parties

1. Leibundguth is an Illinois corporation located in Downers Grove, Illinois, that provides moving and storage services for its customers. (Dkt. 10, Am. Compl. ¶ 11.) Robert Peterson is the sole owner of Leibundguth. (Dkt. 10, Am. Compl. ¶10.)

Response: Undisputed.

2. The Village of Downers Grove is an Illinois municipal corporation located in DuPage County, Illinois. (Dkt. 10, Am. Compl. ¶ 12, Ans. ¶ 12.)

Response: Undisputed.

Jurisdiction and Venue

3. This Court has jurisdiction over this action under 28 U.S.C. §§ 1331, 1343, and 2001 because Plaintiff brought this suit under 42 U.S.C. §§ 1983 and 1988 to seek relief for alleged violations of their federal constitutional rights. (Dkt. 10, Am. Compl. ¶¶ 4, 5; Dkt. 12, Ans. ¶¶ 4, 5.)

Response: Undisputed except for the Village disputes and specifically denies that Plaintiff has standing to challenge the constitutionality of the entire sign ordinance as asserted in Count I of the Complaint. (*See* Defendant's Combined Reply in Support of Its Motion For Summary Judgment, generally).

4. Venue is proper in this district under 28 U.S.C. § 1391(b) because the events giving rise to Plaintiffs' claims occurred within the district and because Defendant is located in this district. (Dkt. 10, Compl. ¶ 9; Dkt. 12, Ans. ¶ 9.)

Response: Undisputed.

FACTS

Leibundguth's Business and Signs

5. Leibundguth is located at the property and building at 1301 Warren Avenue in Downers Grove. The back wall of the building runs parallel to the BNSF railroad tracks. (Dkt. 10, Am. Compl. ¶ 14; Dkt. 12, Ans. ¶ 14.)

Response: Undisputed.

6. The building bears four signs advertising Leibundguth's business. (Dkt. 10, Am. Compl. ¶ 23; Dkt. 12, Ans. ¶ 23.)

Response: The Village disputes this assertion and any suggestion the building bears four "separate" signs. Two of the four signs referenced by Plaintiff form a "single" wall sign under the code. Only three "separate" signs exist at the property as defined and measured under the Village sign ordinance (Dkt. 12, Ans. ¶¶ 20, 21; Dkt. 10, Compl. Ex. B, November 19, 2014 staff report; Dkt. 37, Def. SOF, Ex. 7, Popovich Dep., Ex. 9 PageID #3742-3743; Ex. 10 PageID #3744; Ex. 11 PageID #3745; Ex. 18 PageID #3812-3813; Popovich Dep., 14:6-17).

7. The back of the building bears a sign that is painted directly on the wall of the building that advertises to train commuters riding Metra along the BNSF railway. (Dkt. 10, Am. Compl. ¶ 16; Dkt. 12, Ans. ¶ 16.)

Response: Undisputed.

8. The sign on the back wall of Plaintiff's building exceeds Sections 9.050(C)(5)'s size limit, (Dkt. 10, Am. Compl. ¶ 16) and violates Section 9.020(P)'s prohibition on signs painted directly on a wall. (Dkt. 10, Am. Compl. ¶ 29.)

Response: Undisputed.

9. The front of the building bears a smaller sign that is also painted directly on the wall of the building. (Dkt. 10, Am. Compl. ¶ 19; Dkt. 12, Ans. ¶ 19.) The sign painted on the front of the building violates Section 9.020(P)'s prohibition on signs painted directly on a wall. (Dkt. 10, Am. Compl. ¶ 29.)

Response: Undisputed.

10. These painted signs predate the ownership interest of Robert Peterson, the sole owner of Leibundguth, Peterson believes that these signs were erected shortly after the building was built in the 1930s. (Def. Ex. 5, Peterson Dep., 21:11-15; 36:10 – 38:11; Dkt. 10, Am. Compl. ¶¶ 16, 19.)

Response: The Village disputes this assertion as Peterson has admitted that the painted signs have changed since they were originally installed. The rear painted sign was modified after 1987 (Dkt. 37, Def. SOF, Ex. 5, Peterson Dep., 88:1-24; 89:1-15; 37:7-8) and the front painted sign was modified after 1977. (Dkt. 37, Def. SOF, Ex. 5, Peterson Dep., 95:24; 96:1-24; 97:1-24; 98:5; Dkt. 10, Compl. ¶ 19.)

11. The front of the building also contains a sign with “Leibundguth Storage & Van Service” in red and white hand-painted block letters. This sign was erected in 1965. (Dkt. 10, Am. Compl. ¶ 20; Dkt. 12, Ans. ¶ 20; Def. Ex. 5, Peterson Dep., 39:20 – 40:5.)

Response: The Village disputes that the sign referenced is a single sign. It is only a portion of the larger sign described by Plaintiff in paragraph 12 below (Dkt. 12, Ans. ¶¶ 20, 21; Dkt. 10, Compl. Ex. B, November 19, 2014 staff report; Dkt. 37, Def. SOF, Ex. 7, Popovich Dep., Ex. 9 Page ID #3742-3743; Ex.10 PageID #3744; Ex. 11 PageID #3745; Ex. 18 Page ID #3812-3813; Popovich Dep., 14:6-17). While the Village does not dispute the plastic manufactured letters were first installed in 1965, the Village disputes any suggestion the sign is

“painted” on the wall as it has manufactured letters affixed to the building. (Dkt. 37, Def. SOF, Ex. 5, Peterson Dep., Ex. 11, PageID #2310-2311).

12. Directly under that sign is a sign that says “Wheaton World Wide Moving,” which advertises Leibundguth’s relationship with its long-distance mover. That sign was erected in 1987, replacing a similar sign with the previous business name of Wheaton. (Dkt. 10, Am. Compl. ¶ 21; Dkt. 12, Ans. ¶ 21; Def. Ex. 5, Peterson Dep., 42:22-24; 43:1-24; 44:1-19; 88:15-24; 89:1-15.)

Response: The Village disputes that the “Wheaton” sign referenced is a single sign. It is only a portion of the larger sign described by Plaintiff in paragraph 11 above. (Dkt. 12, Ans. ¶¶ 20, 21; Dkt. 10, Compl. Ex. B, November 19, 2014 staff report; Dkt. 37, Def. SOF, Ex. 7, Popovich Dep., Ex. 9 PageID #3742-3743; Ex. 10 PageID #3744; Ex. 11 PageID #3745; Ex. 18 Page ID #3812-3813; Popovich Dep., 14:6-17). The Village does not dispute the “Wheaton” portion of the sign was erected in 1987, but does dispute it replaced a similar sign as the 1977 photograph of the building from the official code enforcement file shows no sign existed there as of 1977. (Dkt. 37, Def. SOF, Ex. 5, Peterson Dep., Ex. 12, PageID #2313-2314).

13. Collectively, according to the Village, the signs on the front of the building violate Section 9.050(A)’s limitation on the total aggregate size of signs. (Dkt. 10, Am. Compl. ¶ 39; **Pl. Ex. A**, Downers Grove Zoning Board of Appeals Minutes, Nov, 19, 2014.) Collectively, the signs on the front of the building violate Section 9.050(C)’s limit on the total number of wall signs per tenant frontage. (Dkt. 10, Am. Compl. ¶ 30.)

Response: The Village does not dispute that the collective two wall signs on the front of the building violate and exceed the size and number of wall signs allowed under the sign ordinance provisions cited by Plaintiff. (Dkt. 37, Def. SOF, Ex. 2, sign ordinance).

14. All four of Plaintiffs' signs are truthful and not misleading. The signs communicate only the name of the business, the telephone number of the business, and Leibundguth's relationship with Wheaton World Wide Movers. (Dkt. 10, Am. Compl. ¶ 23; Dkt. 12, Ans. ¶ 23.)

Response: The Village does not dispute that the two signs on the front of the building are truthful and not misleading. However, the Village does dispute that the rear wall sign is truthful and not misleading as it advertises a relationship with a non-existent business (Dkt. 37, Def. SOF, Ex. 5, Peterson Dep. Ex. 10, PageID #2309), and Peterson has admitted it was therefore untruthful. (Dkt. 37, Def. SOF, Ex. 5, Peterson Dep., 45:20-24; 46:1-6). The Village also disputes the existence of four separate signs on the building, as only three exist as defined by the Village code. (Dkt. 12, Ans. ¶¶ 20, 21; Dkt. 10, Compl. Ex. B, November 19, 2014 staff report; Dkt. 37, Def. SOF, Ex. 7, Popovich Dep., Ex. 9 PageID #3742-3743; Ex. 10 PageID #3744; Ex. 11 PageID #3745; Ex. 18 PageID #3812-3813; Popovich Dep., 14:6-17).

15. All four of Plaintiffs' signs advertise a lawful activity – moving and storage – for which Leibundguth is licensed. (Dkt. 10, Am. Compl. ¶ 24; Dkt. 12, Ans. ¶ 24.)

Response: The Village disputes this assertion as after preparation of the Village's Answer, in discovery the Village learned that the rear sign is not truthful as it advertises a relationship with a non-existing business. (Dkt. 37, Def. SOF, Ex. 5, Peterson Dep., Ex. 10, PageID #2309; Peterson Dep., 45:20-24; 46:1-6). The Village also disputes four separate signs exist, as only three exist on the property. (Dkt. 12, Ans. ¶¶ 20, 21; Dkt. 10, Compl. Ex. B, November 19, 2014 staff report; Dkt. 37, Def. SOF, Ex. 7, Popovich Dep., Ex. 9 PageID #3742-3743; Ex. 10 PageID #3744; Ex. 11 PageID #3745; Ex. 18 PageID #3812-3813; Popovich Dep., 14:6-17). The Village does not dispute that moving and storage is a lawful business activity.

16. The signs on the back of Leibundguth's building accounts for about 15-20 percent of the business's revenue. (Dkt. 10, Am. Compl. ¶ 18; **Pl. Ex. B**, Taylor Expert Report 14-17.)

Response: The Village disputes this allegation (Dkt. 12, Ans. ¶ 18). Plaintiff has not produced any evidence of actual lost income or income generated from the rear sign, as it is an estimate only (Dkt. 37, Def. SOF, Ex. 5, Peterson Dep., 56:11-24; 57:1-24; 58:1-24; 59:1-24; 60:1-24; 61:1-5).

Village Actions Denying Plaintiff Relief from the Sign Ordinance

17. At meetings on September 2, September 9, and October 7, 2014, the Village Council discussed a proposed amendment to the sign ordinance, suggested by Leibundguth, to allow signs to face the BNSF railway. Resolutions introduced at the September 2 and October 7 Village Council meetings, which would have allowed signs to face the railway, failed. (**Pl. Ex. C**, Downers Grove Village Council Meeting Minutes, Sept. 2, 2014 at 9-11; Sept. 9, 2014 at 2; and Oct. 7, 2014 at 7-9.)

Response: The Village does not dispute the meetings cited were held and the proposed resolutions failed. The Village disputes the amendment proposed would allow "signs" to face the BNSF railway, as the amendment addressed only wall signs, and the sign ordinance allow a number of other types of signs such as monument signs, shingle signs, projecting signs, awning signs, under-canopy signs and window signs to face the BNSF railway as admitted by Leibundguth. (Dkt. 37, Def. SOF, Ex. 2, sign ordinance (§ 9.050); Dkt. 10, Compl. ¶ 32).

18. Mr. Peterson also applied to the Downers Grove Zoning Board of Appeals for a variance that would have allowed him to have a sign facing the Metra, have a sign directly painted on the wall of the building, and have signs exceeding the maximum aggregate sign area.

On November 19, 2014, the Zoning Board of Appeals denied Mr. Peterson's variance request. (**Pl. Ex. A**, Downers Grove Zoning Board of Appeals Meeting Minutes, Nov. 19, 2014, at 2-9.)

Response: The Village disputes a single variation was sought by Plaintiff, as multiple variations were sought and needed to comply with the sign ordinance. (Dkt. 10, Compl. Ex. B, November 19, 2014 staff report). The Village further disputes that Plaintiff needed a variance for a sign to face the Metra railway, as at the time the request was made multiple different types of signs were allowed to do so under the sign ordinance as admitted by Leibundguth. (Dkt. 37, Def. SOF, Ex. 2, sign ordinance (§ 9.050); Dkt. 10, Compl. ¶ 32).

19. In a letter denying Leibundguth's petition for a variance, Patrick Ainsworth, Village Planner, stated that, to comply with the sign ordinance, Leibundguth could remove its two painted signs by applying a solid paint color over them. The letter also gave Leibundguth until April 17, 2015, to paint the building walls over those signs because an average temperature at 50 degrees Fahrenheit is required. (**Pl. Ex. D**, Letter from Ainsworth, Nov. 26, 2014.)

Response: The Village does not dispute the content of the letter referenced and denial of the multiple variations requested by Plaintiff, (Dkt. 40, Pl. SOF, Ex. D, November 26, 2014 letter from Patrick Ainsworth), as the text of the letter speaks for itself. The Village does dispute any suggestion that the Village or Mr. Ainsworth instructed or directed Peterson to remove the painted signs by painting over them, as it was simply assumed he would elect that option as the least-expensive and easiest option to achieve compliance.

Village Ordinances

20. The sign ordinance does not restrict the size, location, or number of governmental signs, temporary decorations and signs, noncommercial flags, and memorial signs and tablets. (Def. Ex. 2, Sign Ordinance, Sec. 9.030.)

Response: The Village does not dispute that each of these signs is allowed without a permit. The Village does dispute the signs identified are not restricted in size, location and number as they must conform to Sections 9.010, 9.020 of the sign ordinance and temporary signs must also comply with Section 9.040 of the sign ordinance, so no “blanket” statement can be made as to when or where they are allowed in isolation without reference to a specific property and/or zoning classification. (Dkt. 37, Def. SOF, Ex. 2, sign ordinance).

21. The sign ordinance limits street address signs to four square feet. (Def. Ex. 2, Sign Ordinance, Sec. 9.030.)

Response: Undisputed.

22. The sign ordinance limits “no trespassing” signs to two square feet. (Def. Ex. 2, Sign Ordinance, Sec. 9.030.)

Response: Undisputed.

23. The sign ordinance limits political and noncommercial signs, which it defines to include home occupation signs, to a total of 12 square feet for all such signs per lot, and these signs may not be placed on the public right-of-way. (Def. Ex. 2, Sign Ordinance, Sec. 9.030.)

Response: The Village disputes that home occupation signs are regulated and defined under Section 9.030 as they are regulated under Section 9.070.B. (Dkt. 37, Def. SOF, Ex. 2, sign ordinance (§ 9.070.B)). It is undisputed that Section 9.030 states: “Political signs and noncommercial signs, provided that total area of all such signs together may not exceed a maximum area of 12 square feet per lot. Political and noncommercial signs may not be placed in the public right-of-way.” (Dkt. 37, Def. SOF, Ex. 2, sign ordinance).

24. The sign ordinance limits real estate signs to 5.5 square feet in residential zones and 36 square feet in nonresidential zones, but real estate signs may not exceed 10 feet in height.

The sign ordinance also limits the number of real estate signs and prohibits them in the public right-of-way, except that open house signs are allowed only on Friday, Saturday, and Sunday at certain times. (Def. Ex. 2, Sign Ordinance, Sec. 9.030.)

Response: The Village does not dispute any of the text of Section 9.030.H of the sign ordinance which addresses real estate signs, as this provision speaks for itself. (Dkt. 37, Def. SOF, Ex. 2, sign ordinance).

25. The sign ordinance states that garage sale, rummage sale, yard sale and estate sale signs may not exceed four square feet and are allowed in the public right-of-way, except that such signs are allowed only on Friday, Saturday, and Sunday at certain times. (Def. Ex. 2, Sign Ordinance, Sec. 9.030.)

Response: The Village does not dispute any of the text of Section 9.030.J of the sign ordinance as governing garage sale, rummage sale, yard sale and estate sale signs, as this provision speaks for itself. (Dkt. 37, Def. SOF, Ex. 2, sign ordinance).

26. The sign ordinance states that help wanted signs must not exceed two square feet and may only be placed on a window or door. (Def. Ex. 2, Sign Ordinance, Sec. 9.030.)

Response: The Village does not dispute any of the text of Section 9.030.L of the sign ordinance as governing help wanted signs, as this provision speaks for itself. (Dkt. 37, Def. SOF, Ex. 2, sign ordinance).

27. The sign ordinance does not permit vehicle signs to remain stationary for an extended period of time for the purpose of attracting attention to a business. (Def. Ex. 2, Sign Ordinance, Sec. 9.030.)

Response: The Village does not dispute any of the text of Section 9.030.N of the sign ordinance as governing vehicle signs, as this provision speaks for itself. (Dkt. 37, Def. SOF, Ex. 2, sign ordinance).

28. The sign ordinance does not count certain signs in calculating Section 9.050(A)'s limit on total aggregate sign size. Properties abutting the right-of-way of I-88 or I-355 are allowed an additional monument sign that may not exceed 225 square feet, which does not count in calculating the lot's total sign area. (Def. Ex. 2, Sign Ordinance, Sec. 9.050(B)(3).) A building of four stories or more is allowed one wall sign of 100 square feet or less on no more than three sides of the building, and these are not counted against the maximum allowable sign area. (Def. Ex. 2, Sign Ordinance, Sec. 9.050(C)(4).) The Village also does not count a panel sign in a multi-tenant shopping center (Def. Ex. 2, Sign Ordinance, Sec. 9.050(B)(2), window signs (Def. Ex. 2, Sign Ordinance, Sec. 9.050(H)), or menu boards (Def. Ex. 2, Sign Ordinance, Sec. 9.050(D)) in calculating a building's sign area.

Response: The Village does not dispute the actual text of each section recited by Plaintiff, and admits as undisputed that the text of each section speaks for itself. (Dkt. 37, Def. SOF, Ex. 2, sign ordinance).

29. The sign ordinance places no limit on the number of window signs or shingle signs a property may have (Def. Ex. 2, Sign Ordinance, Sec. 9.050(H), (B)(4)); allows multiple window signs (Def. Ex. 2, Sign Ordinance, Sec. 9.050(H)); and, in addition to a wall sign, allows building owners to display a shingle sign or a monument sign (Def. Ex. 2, Sign Ordinance, Sec. 9.050(B)), a menu board (Def. Ex. 2, Sign Ordinance, Sec. 9.050(D)), a projecting sign, (Def. Ex. 2, Sign Ordinance, Sec. 050(E)) an awning sign (Def. Ex. 2, Sign Ordinance, Sec. 9.050(F)), and an under-canopy sign (Def. Ex. 2, Sign Ordinance, Sec. 9.050(G)).

Response: The Village does not dispute the actual text of each section recited by Plaintiff, and admits as undisputed that the text of each section speaks for itself. The Village does dispute that there are no other limitations on each of these signs as they are all subject to Section 9.010 and 9.020 of the sign ordinance, so no “blanket” statement can be made as to when or where they are allowed in isolation without reference to a specific property and/or zoning classification. (Dkt. 37, Def. SOF, Ex. 2, sign ordinance).

30. The Zoning Code, of which the Sign Ordinance is part, defines “Commercial Sign” as “A sign that identifies, advertises, or directs attention to a commercial business, or is intended to induce the purchase of goods, property, or service; including, without limitation, a sign naming a brand of goods or service.” (Pl. Ex. E, Zoning Code, Sec. 15.220.)

Response: Undisputed.

31. The Zoning Code defines “Noncommercial sign” as “A sign that does not promote commercial activity, such as ornamental entry gate signs. Home occupation signs are also deemed noncommercial signs.” (Pl. Ex. E, Zoning Code, Sec. 15.220.)

Response: Undisputed.

32. The Village does not prohibit a brick exterior wall of a building from being painted. (Pl. Ex. F, Municipal Code, Sections 7.1901, 7.104.)

Response: Undisputed, with the exception that if the exterior wall of a building is painted with a “sign” as defined under the Village zoning ordinance, it would be prohibited under Section 9.020.P of the sign ordinance. (Dkt. 40, Pl. SOF, Ex. E, Zoning Code, § 15.220).

33. The Village staff report accompanying Ordinance No. 5472 states: “There are instances of flags and murals painted on buildings and these are permitted by the code on the

basis that they are decorative, and do not convey constitutionally protected commercial or non-commercial speech.” (Def. Ex. 4, Report of Plan Commission, July 6, 2015, at 3.)

Response: Undisputed that this statement is included as part of the overall report referenced.

34. The Village staff report accompanying Ordinance No. 5472 states: “The allowance of painted signs in limited locations of the Village versus other locations may be somewhat more difficult to defend relative to the intent and purpose of the Sign Ordinance as detailed in Section 9.010.” (Def. Ex. 4, Report of Plan Commission, July 6, 2015, at 3.)

Response: Undisputed that this statement is included as part of the overall report referenced.

35. The Village staff report accompanying Ordinance No. 5472 does not identify any reasons why, or ways in which, the prohibition on signs painted on a wall, roof, or fence advances traffic safety. (Def. Ex. 4, Report of Plan Commission, July 6, 2015, at 3.)

Response: The Village disputes this statement as the report includes references to visibility issues resulting from aging and fading painted signs, illumination issues and visual chaos resulting from excessively large or deteriorating painted signs, all of which may impact and impair traffic safety and the wayfinding function of painted signs. (Dkt. 37, Def. SOF, Ex. 4, July 6, 2015 Report of the Plan Commission).

36. On July 6, 2015, the Village of Downers Grove Plan Commission held a hearing on a petition to approve multiple text amendments, including the amendments to the sign ordinance to allow a wall sign along the railway but limit the size of such wall sign and to prohibit signs painted on a wall, roof, or fence in all zoning districts in the Village. During the hearing the only public comment was from Bob Peterson, owner of Plaintiff Leibundguth,

Jeffrey Schwab, attorney for Plaintiff, and one other citizen from Downers Grove, whose only relevant comment was that the Village staff in discussing signs only addressed the negatives and did not mention the positive aspects of signs, like advertising. The members of the Plan Commission had no relevant discussion and passed the petition unanimously. (**Pl. Ex. G**, Plan Commission Meeting Minutes, July 6, 2015, at 9-11.)

Response: The Village does not dispute the public hearing referenced and that public comment was taken by the individuals identified by Plaintiff to consider multiple text amendments that were ultimately approved by the Village Council by adoption of Ordinance No. 5472 on July 21, 2015. (Dkt. 37, Def. SOF, Ex. 3, Ordinance No. 5472). The Village does not dispute the accuracy or content of the minutes from the meeting (Dkt. 40, Pl. SOF, Ex. G, July 6, 2015 Plan Commission Meeting Minutes), but does dispute Plaintiff's characterization as to what testimony and discussion was relevant, and that the minutes include the complete record of the discussion held.

37. On July 14, 2015, the Village of Downers Grove Council heard the first reading of a proposed ordinance to approve multiple text amendments, including the amendments to the sign ordinance to allow a wall sign along the railway but limit the size of such wall sign and to prohibit signs painted on a wall, roof, or fence in all zoning districts in the Village. Only two members of the public spoke about this proposed ordinance at this meeting: Bob Peterson, owner of Leibundguth and another member of the public, who stated that modern technology allows painted bricks to breathe, but stated that he does not like painted masonry. He also questioned who gets to decide when a mural is not advertising. Commissioner Barnett spoke in favor of the amendments. Commissioner White stated that the regulation of painted wall signs should be consistent; either they should be allowed everywhere or prohibited everywhere. He stated that he

prefers to remove the prohibition on painted wall signs across the Village. (**Pl. Ex. H**, Village Council Meeting Minutes, July 14, 2015, at 9-10.)

Response: The Village does not dispute that the meeting referenced was held, and public comment was received by the individuals named by Plaintiff to approve multiple text amendments that were ultimately adopted by Ordinance No. 5472 on July 21, 2015, (Dkt. 37, Def. SOF, Ex. 3, Ordinance No. 5472). The Village also does not dispute the accuracy or content of the minutes from said meeting (Dkt. 40, Pl. SOF, Ex. H, July 14, 2015 Village Council Meeting Minutes), however, those minutes reflect only a portion of the complete record of the testimony and discussion held at the meeting.

38. On July 21, 2015, the Village of Downers Grove Council held a hearing on the proposed ordinance to approve multiple text amendments, including the amendments to the sign ordinance to allow a wall sign along the railway but limit the size of such wall sign and to prohibit signs painted on a wall, roof, or fence in all zoning districts in the Village. During public comments, only Bob Peterson, owner of Leibundguth, and Jeffrey Schwab, Plaintiff's attorney, spoke. After a short discussion by the Commissioners in which three commissioners expressed support, the Village Council passed the ordinance unanimously. The Commissioners did not discuss traffic safety or aesthetics implications of this ordinance. (**Pl. Ex. I**, Village Council Meeting Minutes, July 21, 2015, at 7-8.)

Response: The Village does not dispute that the meeting referenced was held, public comment was taken by the individuals identified by Plaintiff and that Ordinance No. 5472 was passed unanimously on July 21, 2015. The Village does not dispute the accuracy or content of the minutes from the meeting (Dkt. 40, Pl. SOF, Ex. I, July 21, 2015 Village Council Meeting Minutes), but the minutes are not a complete record of what was said at the meeting. The

Village does dispute that traffic safety and aesthetic implications were not considered, as both are clearly stated in the findings within Ordinance No. 5472 as adopted and approved by each of the Village Council members by unanimous vote. (Dkt. 37, Def. SOF, Ex. 3, Ordinance No. 5472).

Planned Development Amendment for Art Van Furniture

39. On November 18, 2014, the Village Council approved a Planned Development Amendment to grant the Art Van Furniture store at 1021 Butterfield Drive in Downers Grove three variations from sign regulations: to increase the total sign area from 300 square feet to 990 square feet; to permit a sign on the east façade of the building with no frontage where no sign is allowed; and to allow two signs each on the north, south, and west façades of the building where only one sign each is permitted. (**Pl. Exs. J and K**, Village Council Minutes, Nov. 11, 2014, at 9-11, and Nov. 18, 2014, at 6.)

Response: The Village does not dispute that the meeting referenced was held and the three variations were requested for this unique Planned Development property located in between Butterfield Road and the I-88 regional expressway. The Village does not dispute the accuracy and content of the minutes (Dkt. 30, Pl. SOF, Ex. J, November 11, 2014 Village Council Meeting Minutes; Ex. K, November 18, 2014, Village Council Meeting Minutes), but does dispute that the minutes reflect all discussion held at the meeting or that the minutes constitute the complete record of the meeting. Attached hereto as **Def. Resp. SOF Ex. 1** is the Certification Affidavit of Village Clerk, April K. Holden, which includes the staff reports, the ordinances adopted for the project and other related Village documents reflecting the entire process and consideration undertaken by the Village prior to approval of the planned unit development including variations requested.

40. During the discussion on the Planned Development Amendment for the Art Van Furniture store at 1021 Butterfield Drive at the Village Council meeting on November 11, 2014, there was no discussion about the traffic safety consequences of allowing 990 square feet of signs, allowing a wall sign that was not along a right-of-way, or allowing two wall signs on three sides of the building where only one is permitted. The only discussion of aesthetics was the Mayor's comment that these variances would improve the aesthetics of the Village. (**Pl. Ex. J**, Village Council Meeting Minutes, November 11, 2014, at 9-11.)

Response: The Village does not dispute the accuracy or content of the minutes referenced (Dkt. 40, Pl. SOF, Ex. J, November 11, 2014 Village Council Meeting Minutes), but does dispute that the minutes constitute the complete record and include all discussions and comments made at the meeting, or the process and consideration undertaken on this unique Planned Development property located in between Butterfield Road and the I-88 regional expressway. (Def. Rep. Ex. 1).

41. The Village is providing a tax incentive to Art Van Furniture, rebating 50% of the sales tax generated over 15 years. (**Pl. Exs. J and K**, Village Council Meeting Minutes, November 11, 2014, at 9-11, and November 18, 2014 at 6.)

Response: The Village does not dispute the content and accuracy of the minutes referenced (Dkt. 40, Pl. SOF, Ex. J, November 11, 2014 Village Council Meeting Minutes; Ex. K, November 18, 2014 Village Council Meeting Minutes), nor that a tax incentive was given as reflected in the Economic Incentive Agreement and Amendment included within Def. Rep. Ex. 1.

42. On November 11, 2014, during the discussion on the Planned Development Amendment for the Art Van Furniture store, Stan Popovich, Planning Manager of the Village of

Downers Grove stated that the Village staff believed that the variations from the sign ordinance were important for the store's success. (**Pl. Ex. J**, Village Council Meeting Minutes, November 11, 2014, at 9-11.)

Response: The Village does not dispute that the meeting referenced was held, nor does the Village dispute the accuracy and content of the minutes (Dkt. 40, Pl. SOF, Ex. J, November 11, 2014 Village Council Meeting Minutes; Ex. K, November 18, 2014 Village Council Meeting Minutes), but does dispute that the minutes reflect all discussion held at the meeting and that the minutes constitute the complete record of the meeting. (Def. Rep. Ex. 1).

Plaintiff's Expert Testimony

43. Academic research indicates that signs that are readable and conspicuous do not pose a threat to traffic safety. Signs painted directly on the wall of a building pose no greater risk to traffic safety because they inherently pose no different issues related to readability, visibility, and obstruction of a driver's view than other signs. The Federal Highway Administrator's reviews of signage and traffic safety have found that there is no conclusive link between signs and traffic accident. (**Pl. Ex. B**, Taylor Expert Report 4-9.)

Response: The Village disputes in part and admits in part that academic research indicates on-premise commercial signs that are readable and conspicuous can enhance traffic safety by assisting the wayfinding function. The Village disputes that academic research indicates that merely making a sign readable and conspicuous eliminates traffic safety concerns. (Dkt. 37, Def. SOF, Ex. 14). The Village disputes that signs painted on a wall pose no different readability or visibility to a driver's view than manufactured signs. (Dkt. 36, Def. Memo, Ex. D; Dkt. 37, Def. SOF, Ex. 5, Peterson Dep., Ex. 12, PageID #2313-2314; Def. SOF, Ex. 3, Ordinance No. 5472).

The Village also disputes the credibility and opinions of Plaintiff's expert. (Dkt. 37, Def. SOF, Ex. 9, Pointner Dep., Ex. 5, PageID #4294-4300; Pointner Dep., generally; Dkt. 37, Def. SOF, Ex. 14, treatises). As is evident from a review of Dr. Taylor's report and deposition transcript, the "academic research" referenced dates back as far as 1955 and relates almost entirely to highways and billboard studies that the Village believes are irrelevant to this case. (Dkt. 37, Def. SOF, Ex. 6, Taylor Dep., Ex. 4, PageID #2971-3029; Ex. 7, PageID #3068-3298; Taylor Dep., 44:50; 60:11-24; 61:1-11; 63:21-24; 64:1-15; 142:9-20). Notably also, Dr. Taylor has never visited the Leibundguth property, or even Downers Grove, he is not familiar with the surrounding communities, and has never written a sign ordinance. (Dkt. 37, Def. SOF, Ex. 6, Taylor Dep., 17:22-24). Dr. Taylor did not know what type of street Leibundguth's building faces, how many lanes of traffic there are in front of Leibundguth's building, the posted speed limit for the street nor the cone of vision for vehicles on the street. (Dkt. 37, Def. SOF, Ex. 6, Taylor Dep., 31:11-22). He also admitted he did not receive or review any of the Village documents concerning the 18-month history the Village undertook prior to adoption of the sign ordinance, nor any minutes of the public hearings conducted on the sign ordinance (Dkt. 37, Def. SOF, Ex. 6, Taylor Dep., 66:6-22; 67:9-11), while at the same time agreeing that a community's interest in preserving its aesthetic character is a substantial interest. (Dkt. 37, Def. SOF, Ex. 6, Taylor Dep., 149:11-15). Dr. Taylor's credibility stands in stark contrast to the Village's expert, Pete Pointner, who has over 50 years of practical experience in municipal land planning, including in Downers Grove and numerous surrounding communities, has written zoning ordinances and sign regulations, has researched the sign ordinances of 33 other Chicago suburban communities and reviewed the entire Village history on the sign ordinance in

formulating his opinions in this case. (Dkt. 37, Def. SOF, Ex. 9, Pointner Dep., Ex. 4, PageID #4278-4293; Ex. 5, PageID #4294-4308; Pointner Dep., 35-36; 48; 52-53; 64-66; 78-80).

44. Limiting the size of signs may be more likely to threaten traffic safety than enhance it because a driver looking for a particular business (and thus its sign) will be more distracted and have a harder time finding the business if the signs are smaller, thus threatening traffic safety. Signage deficiency has been an issue in tort cases where signs have been too small. For that reason, the Federal Highway Administration has mandated a minimum size for traffic signs. Additionally, on-premise signs can actually enhance traffic safety, because they can assist in keeping drivers alert and in finding their way. “[A] FHWA study showed that on-premise signs located at high traffic intersection[s] increased traffic safety provided they met FHWA standards for legibility, conspicuity, [and] readability.” (**Pl. Ex. B**, Taylor Expert Report 8-9.)

Response: The Village admits that the size of signs can directly impact traffic safety. The Village disputes that limitation of sign size is more likely to threaten traffic safety than unrestricted sign size. The Village admits that size limitations which defeat the visibility of commercial on-premise signs defeat the wayfinding function and thus diminish traffic safety. The Village admits that the federal government regulates the size of signs because the size of signage impacts traffic safety. The Village admits that legibility, readability, and conspicuity of on-premise commercial signage serve traffic safety interests. The balance of paragraph 44 is disputed. (Dkt. 37, Def. SOF, Ex. 14).

The Village also disputes the credibility of Plaintiff’s expert. (Dkt. 37, Def. SOF, Ex. 9, Pointner Dep., Ex. 5, PageID #4294-4308; Pointner Dep., generally; Dkt. 37, Def. SOF, Ex. 14, treatises). As is evident from a review of Dr. Taylor’s report and deposition transcript, the “academic research” referenced dates back as far as 1955 and relates almost entirely to highways

and billboard studies that the Village believes are irrelevant to this case. (Dkt. 37, Def. SOF, Ex. 6, Taylor Dep., Ex. 4, PageID #2971-3029; Ex. 7, PageID #3068-3298; Taylor Dep., 44:50; 60:11-24; 61:1-11; 63:21-24; 64:1-15; 142:9-20). Notably also, Dr. Taylor has never visited the Leibundguth property, or even Downers Grove, he is not familiar with the surrounding communities, and has never written a sign ordinance. (Dkt. 37, Def. SOF, Ex. 6, Taylor Dep., 17:22-24). Dr. Taylor did not know what type of street Leibundguth's building faces, how many lanes of traffic there are in front of Leibundguth's building, the posted speed limit for the street nor the cone of vision for vehicles on the street. (Dkt. 37, Def. SOF, Ex. 6, Taylor Dep., 31:11-22). He also admitted he did not receive or review any of the Village documents concerning the 18-month history the Village undertook prior to adoption of the sign ordinance, nor any minutes of the public hearings conducted on the sign ordinance (Dkt. 37, Def. SOF, Ex. 6, Taylor Dep., 66:6-22; 67:9-11), while at the same time agreeing that a community's interest in preserving its aesthetic character is a substantial interest. (Dkt. 37, Def. SOF, Ex. 6, Taylor Dep., 149:11-15). Dr. Taylor's credibility stands in stark contrast to the Village's expert, Pete Pointner, who has over 50 years of practical experience in municipal land planning, including in Downers Grove and numerous surrounding communities, has written zoning ordinances and sign regulations, has researched the sign ordinances of 33 other Chicago suburban communities and reviewed the entire Village history on the sign ordinance in formulating his opinions in this case. (Dkt. 37, Def. SOF, Ex. 9, Pointner Dep., Ex. 4, PageID #4278-4293; Ex. 5, Page ID #4294-4308; Pointner Dep., 35-36; 48; 52-53; 64-66; 78-80).

45. The individual academic studies over the past sixty years that have explicitly researched the issue and controlled for other factors have found no evidence of a correlation between signs and traffic accidents. Studies by insurance companies and law enforcement have

also support the conclusion that there is no correlation between on-premise signs and traffic accidents. (**Pl. Ex. B**, Taylor Expert Report 7.)

Response: The Village disputes paragraph 45. The Village has submitted treatises and academic research which expressly finds that commercial on-premise signs which are visible, readable and properly located and properly illuminated promote the wayfinding function and traffic safety. (Dkt. 37, Def. SOF, Ex. 14).

The Village also disputes the credibility of Plaintiff's expert. (Dkt. 37, Def. SOF, Ex. 9, Pointner Dep., Ex. 5, PageID #4294-4308; Pointner Dep., generally; Dkt. 37, Def. SOF, Ex. 14, treatises). As is evident from a review of Dr. Taylor's report and deposition transcript, the "academic research" referenced dates back as far as 1955 and relates almost entirely to highways and billboard studies that the Village believes are irrelevant to this case. (Dkt. 37, Def. SOF, Ex. 6, Taylor Dep., Ex. 4, PageID #2971-3029; Ex. 7, PageID #3068-3298; Taylor Dep., 44:50; 60:11-24; 61:1-11; 63:21-24; 64:1-15; 142:9-20). Notably also, Dr. Taylor has never visited the Leibundguth property, or even Downers Grove, he is not familiar with the surrounding communities, and has never written a sign ordinance. (Dkt. 37, Def. SOF, Ex. 6, Taylor Dep., 17:22-24). Dr. Taylor did not know what type of street Leibundguth's building faces, how many lanes of traffic there are in front of Leibundguth's building, the posted speed limit for the street nor the cone of vision for vehicles on the street. (Dkt. 37, Def. SOF, Ex. 6, Taylor Dep., 31:11-22). He also admitted he did not receive or review any of the Village documents concerning the 18-month history the Village undertook prior to adoption of the sign ordinance, nor any minutes of the public hearings conducted on the sign ordinance (Dkt. 37, Def. SOF, Ex. 6, Taylor Dep., 66:6-22; 67:9-11), while at the same time agreeing that a community's interest in preserving its aesthetic character is a substantial interest. (Dkt. 37, Def. SOF, Ex. 6, Taylor Dep., 149:11-15).

Dr. Taylor's credibility stands in stark contrast to the Village's expert, Pete Pointner, who has over 50 years of practical experience in municipal land planning, including in Downers Grove and numerous surrounding communities, has written zoning ordinances and sign regulations, has researched the sign ordinances of 33 other Chicago suburban communities and reviewed the entire Village history on the sign ordinance in formulating his opinions in this case. (Dkt. 37, Def. SOF, Ex. 9, Pointner Dep., Ex. 4, PageID #4278-4293; Ex. 5, Page ID #4294-4308; Pointner Dep., 35-36; 48; 52-53; 64-66; 78-80).

46. "Section 9.020(P)'s prohibition of painted signs does not advance traffic safety interests as painted signs can be readable and visible and cannot block drivers' views when making turns unless the building itself blocks drivers' views when making turns." (**Pl. Ex. B**, Taylor Expert Report 9.)

Response: The Village disputes paragraph 46. Chipped, deteriorated, faded, illegible on-premise commercial signs defeat the wayfinding function of commercial on-premise signs and diminish traffic safety. (Dkt. 37, Def. SOF, Ex. 14).

The Village also disputes the credibility of Plaintiff's expert. (Dkt. 37, Def. SOF, Ex. 9, Pointner Dep., Ex. 5, PageID #4294-4308; Pointner Dep., generally; Dkt. 37, Def. SOF, Ex. 14, treatises). As is evident from a review of Dr. Taylor's report and deposition transcript, the "academic research" referenced dates back as far as 1955 and relates almost entirely to highways and billboard studies that the Village believes are irrelevant to this case. (Dkt. 37, Def. SOF, Ex. 6, Taylor Dep., Ex. 4, PageID #2971-3029; Ex. 7, PageID #3068-3298; Taylor Dep., 44:50; 60:11-24; 61:1-11; 63:21-24; 64:1-15; 142:9-20). Notably also, Dr. Taylor has never visited the Leibundguth property, or even Downers Grove, he is not familiar with the surrounding communities, and has never written a sign ordinance. (Dkt. 37, Def. SOF, Ex. 6, Taylor Dep.,

17:22-24). Dr. Taylor did not know what type of street Leibundguth's building faces, how many lanes of traffic there are in front of Leibundguth's building, the posted speed limit for the street nor the cone of vision for vehicles on the street. (Dkt. 37, Def. SOF, Ex. 6, Taylor Dep., 31:11-22). He also admitted he did not receive or review any of the Village documents concerning the 18-month history the Village undertook prior to adoption of the sign ordinance, nor any minutes of the public hearings conducted on the sign ordinance (Dkt. 37, Def. SOF, Ex. 6, Taylor Dep., 66:6-22; 67:9-11), while at the same time agreeing that a community's interest in preserving its aesthetic character is a substantial interest. (Dkt. 37, Def. SOF, Ex. 6, Taylor Dep., 149:11-15). Dr. Taylor's credibility stands in stark contrast to the Village's expert, Pete Pointner, who has over 50 years of practical experience in municipal land planning, including in Downers Grove and numerous surrounding communities, has written zoning ordinances and sign regulations, has researched the sign ordinances of 33 other Chicago suburban communities and reviewed the entire Village history on the sign ordinance in formulating his opinions in this case. (Dkt. 37, Def. SOF, Ex. 3, Ordinance No. 5472; Ex. 4, July 6, 2015 Report of the Plan Commission; Ex. 9, Pointner Dep., Ex. 4, PageID #4278-4293; Ex. 5, Page ID #4294-4308; Pointner Dep., 35-36; 48; 52-53; 64-66; 78-80).

Respectfully Submitted,

VILLAGE OF DOWNERS GROVE, ILLINOIS, an
Illinois municipal corporation, Defendant

BY: /s/ Scott M. Day

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**EXHIBITS TO
DEFENDANT’S REPLY TO PLAINTIFF’S RESPONSE TO DEFENDANT’S
STATEMENT OF FACTS IN SUPPORT OF ITS MOTION FOR SUMMARY
JUDGMENT AND RESPONSE TO PLAINTIFF’S STATEMENT OF FACTS**

Exhibit 1 Certification Affidavit of Village Clerk, April K. Holden and documents

CERTIFICATE OF SERVICE

I, Scott M. Day, an attorney, certify that on September 21, 2015, I filed Defendant's Reply to Plaintiff's Response to Defendant's Statement of Facts in Support of Its Motion for Summary Judgment and Response to Plaintiff's Statement of Facts with the Clerk of the Court, United States District Court for the Northern District of Illinois using the CM/ECF System, which also served same upon all parties of record by the CM/ECF System.

/s/ Scott M. Day
Scott M. Day