STATE OF ILLINOIS )
) SS
COUNTY OF LAKE )

IN THE CIRCUIT COURT OF THE NINETEENTH JUDICIAL CIRCUIT
LAKE COUNTY, ILLINOIS

REED DAILEY, an individual, et al.

Plaintiffs,

v.

CITY OF LAKE FOREST, an Illinois Municipal Corporation, et al.,

Defendants.

Case No. 23 MR 08

**RULING AND ORDER ON COMPLAINT FOR ADMINISTRATIVE REVIEW**

This matter comes before the Court on Plaintiffs' Administrative Review Complaint. Having heard arguments on this Complaint, considered the statutory authority and case law, and being fully advised in the premises, the Court now FINDS AND RULES AS FOLLOWS:

**BACKGROUND**

This Complaint for Administrative Review arises from the Lake Forest City Council's ("Council") decision to overturn the Lake Forest Historic Preservation Commission's ("HPC") decision to deny a Certificate of Appropriateness to 361 Westminster LLC ("Developer") for construction of a multi-unit condominium building and residence within one of Lake Forest's local Historic Districts.

Plaintiffs request reversal of the Council's decision arguing that acting as it did, the Council ignored applicable City Ordinances, policies and procedures. Thus, it was contrary to law and arbitrary and capricious. Plaintiffs further contend that the decision was against the

manifest weight of the evidence because the seventeen standards contained in the City Code were not met.

## ANALYSIS

Plaintiffs first argue the City Council's decision was arbitrary and capricious because it failed to follow its own procedures and cut the HPC out of the appeal process. An administrative decision may be overturned where it is arbitrary and capricious. *ManorCare Health Services, LLC v. Illinois Health Facilities & Services Review Bd.*, 2016 IL App (2d) 151214, ¶ 21; *Marion Hospital Corp. v. Illinois Health Facilities Planning Board,* 324 Ill.App.3d 451, 455 (2001). An administrative decision is arbitrary and capricious where the agency: "(1) relies on factors which the legislature did not intend for the agency to consider; (2) entirely fails to consider an important aspect of the problem; or (3) offers an explanation for its decision which runs counter to the evidence before the agency, or which is so implausible that it could not be ascribed to a difference in view or the product of agency expertise." *Greer v. Illinois Housing Development Authority,* 122 Ill.2d 462, 505–06 (1988). "While an agency is not required to adhere to a certain policy or practice forever, sudden and unexplained changes have often been considered arbitrary." *Greer,* 122 Ill.2d at 506. The "arbitrary and capricious" standard of review is the least demanding standard, the equivalent of the "abuse of discretion" standard. *Greer,* 122 Ill.2d at 497; *ManorCare Health Services, LLC*, 2016 IL App (2d) 151214, ¶ 21.

Plaintiffs allege the Council failed to follow its own ordinances by not receiving and hearing a report from the HPC before deliberating and making its decision. They cite Section 155.11(A)(1)(a) of the City Code stating that when considering appeals from the HPC, the Council "shall hear a report from the Chairperson of the Historic Preservation Commission or the Chairperson's designee." Section 155.03(c)(6) also states that "every determination made by the

Commission on an application shall include written findings of fact and shall specify the reason or reasons for such determination." Plaintiffs argue the HPC failed to submit a written report to the Council and failed to have a representative from the HPC at the Council meeting to explain its decision denying the Developers' application for a Certificate of Appropriateness. In making their argument, Plaintiffs state the Code mandates a written report be produced and presented by the HPC at the Council meeting. The failure to produce the written report and the failure of the Council to receive the report at its meeting "materially affected" the Plaintiffs, who will suffer a loss in property values by having non-historic buildings built near them in the Historic District.

First, Plaintiffs only cite to the first part of Section 155.11 and overlook the second part of the Section. Subsection B specifically states: "Such procedures may be modified in the discretion of the Council in order to foster the gathering of information necessary to ensure that the purposes of this chapter are achieved and to provide full and fair hearing and consideration of the issues on appeal." 155.11(B)(2). Here, the Council was provided the draft minutes of the HPC meeting and a verbatim recording of the HPC meeting. (R. 0319, pg. 4). Plaintiffs insist that a written report of the findings of the HPC should have been prepared and presented to the Council. The caselaw cited by Plaintiffs requires a showing of prejudice or that Plaintiffs were "materially affected" by the application of the Code by the Council before determining the decision was arbitrary and capricious. *See Heavner v. Ill. Racing Bd.*, 103 Ill. App.3d 1020; *Springwood Ass'. V. Health Facitilities Planning Bd.*, 269 Ill. App.3d 944 (1995). They claim they have been "materially affected" by the Council not receiving a written report from the HPC, but their argument focuses on the effect of the Council reversing the decision of the HPC in denying the COA. This is not the same as being materially affected by the lack of written report to the Council itself.

Further, Plaintiffs state that the HPC members' statements and deliberations during their meeting is not ultimately the findings and reasons for its decision. The Court disagrees. Those deliberations included the reasons of its members for denying the Certificate of Appropriateness. Plaintiffs provide no explanation as to why the meeting minutes and a recording of the meeting would not have provided the same information to the Council regarding the deliberations of the HPC and the reasons of the HPC members for the denial. The HPC incorporated its deliberations as findings. (R. 0214, p. 146-147). Thus, there does not seem to be anything that would be included in a written report as to findings and reasons, that was not said and considered during the HPC meeting.

Even if only the first part of Section 155.11 is reviewed for compliance, the Plaintiffs are wrong that the Code is clear and not up for any interpretation. In fact, Plaintiffs themselves are providing their own interpretation of the Code provisions when they insist that only a written report from the HPC that is presented at the Council meeting is sufficient to consider an appeal from the HPC. There is no dispute that a written report was not presented by the HPC to the Council. However, looking at the "arbitrary and capricious" standard, the Court must allow an agency discretion in interpreting its own regulations. *Medponics Ill. V. Dept. of Agric.*, 2021 IL 125443, ¶31 ("an agency's interpretation of its own regulations is entitled to substantial deference and weight. . .") Thus, the decision of the Council to review and consider the HPC meeting minutes and a verbatim recording of the HPC meeting was within its discretion and was not arbitrary and capricious.

Next, Plaintiffs allege the Council's decision was arbitrary and capricious by relying on factors it was not intended to consider. They claim the Council relied on the findings and conclusions of the City Staff, instead of a report of the HPC, which the Council adopted as its

own verbatim. Further, Plaintiffs allege the Council failed "to consider an important aspect of the problem" and allege its' decision was "so implausible that it could not be ascribed to a difference in view or the product of agency expertise." *Greer*, 122 Ill.2d at 505-506. Specifically, they argue that the decision to overturn the decision of the HPC was solely in order to settle pending litigation and no consideration was made of the seventeen standards set forth in the City Code.

The Court fails to see that the Council gave no consideration to the seventeen standards and only based its decision on the ability to settle pending litigation with Developer. There is no dispute that comments and discussion were made during the Council meeting between members as to the pending litigation and the settlement agreement. However, Defendants point out that discussions and comments were also made as to the seventeen standards and the findings made by the Council adopted those discussions and comments. The Council also adopted as findings a Staff Report presented to the HPC and reviewed by the Council. Plaintiffs contend that this a factor the Council was not intended to consider. Not in dispute is that the City Staff report addresses each of the seventeen standards, although Plaintiffs dispute the conclusion made as to some of the standards. However, Plaintiffs' argument seems to be that this report was not to be considered at all. This ignores the fact that, historically, it is common for City Staff to prepare proposed findings. Additionally, nothing appears in the City Code preventing the Council from rejecting, revising, or adopting such proposed findings. Thus, Plaintiffs fail to adequately support their argument that the Council relied on factors it was not intended to consider.

Plaintiffs' arguments must be viewed in light of the abuse-of-discretion standard of review. Under that standard, an agency's decision will not be disturbed unless it is "arbitrary or capricious, or unless no reasonable person would agree with the [agency's] position." *Sonntag v.*

*Stewart*, 2015 IL App (2d) 140445, ¶ 22. This is the least demanding standard and it appears that the Council met the standard based on the record.

The Plaintiffs' second main argument is that the Council's decision was against the manifest weight of the evidence because the overwhelming evidence shows it failed to consider whether condominium building 3 was visually compatible with structures and homes in the Historic District. Plaintiffs maintain that the Council only applied the standards as far as whether building 3 was visually compatible with condominium buildings 1 and 2, which are outside the Historic District.

The Historic District section of the City of Lake Forest Code sets forth seventeen standards that must be met for the review of an application for certificates of appropriateness. Such standards include, but are not limited to: (1) Height; (2) Proportion of front façade; (3) Proportion of openings; (4) Rhythm of solids to voids in front facades; (5) Rhythm of spacing and structures on streets; (6) Rhythm of entrance porches, storefront recesses and other projections; (7) Relationship of materials and texture; (8) Roof shapes; (9) Walls of continuity; (10) Scale of structure; and (11) Directional expression of front elevation. Lake Forest City Code 155.08. The Code specifies that when considering these standards, the new construction "shall be visually compatible with properties, structures, sites, public ways, objects, and places to which it is visually related." Lake Forest City Code 155.08.

A decision is said to be contrary to the manifest weight of the evidence only when, after reviewing the evidence in a light most favorable to the administrative agency, the court determines that no rational trier of fact could have agreed with the agency's decision. *Service Employees International Local Union No. 316 v. Illinois Educational Labor Relations Board,* 153 Ill.App.3d 744, 753 (1987). In other words, reversal is appropriate only when the opposite

conclusion of the one reached by the Commission is "clearly evident." *Madonia v. Houston,* 125 Ill.App.3d 713, 716 (1984). If the record contains any evidence supporting the Commission's decision . . . the decision must be sustained on review. *Fagiano v. Police Board,* 123 Ill.App.3d 963, 974 (1984); *Zaruba v. Vill. of Oak Park*, 296 Ill. App. 3d 614, 622 (1st Dist. 1998).

Plaintiffs state in their briefs that standards 1 (Height), 3 (Proportion of Openings), 4 (Rhythm of Solids to Voids), 5 (Spacing on the Street), and 6 (Rhythm of Entrance Porches) were only evaluated against the other two condominium buildings outside the Historic District. No findings were made that bldg. 3 was "visually compatible" with structures within the Historic District. Further, they assert standards 2, 7, 8, 9, 10 and 11 of the Council's findings are also directed only to the condominium building 3's visual compatibility to the other two condominium buildings.

However, a review of the records finds that there is evidence that the Council's findings included considerations that building 3 was visually compatible with residences and buildings to which it was visually related, both within and outside the Historic District. The Council adopted as part of its findings the City Staff report first presented to the HPC and then presented to the Council as part of its discussion and deliberations. As to standard 1, the finding made was the "building provides a transition from the taller condominium buildings to the west to the single family homes to the east and fully complies with the allowable height of 35 feet." As to standard 3, the finding made was "There is a regular pattern of openings around the building that are evenly spaced and aligned between the first and second levels." As to standard 5, the finding made was "the proposed building is set behind the proposed single family residence and is no longer prominently located on the Westminster streetscape. The condominium building is located behind the single family residence and is sited over 100 feet back from the streetscape." As to

standard 6, the finding made was "The front entries along the west elevation are detailed with elements such as fluted columns, entablatures, sidelights and transoms, helping to reinforce the residential character and appearance of the buildings and bringing a human scale to the design."

Further findings as to other of the seventeen standards were made, including:

> Standard 10 (Scale) – The Building Scale provisions normally applied to single family and duplex dwellings do not apply to this multi-family development. The residence is the fourth building in a Planned Development, not a stand-alone single family residence. The property is in a transitional area and the scale of the single family residence and condominium building responds to the buildings of various sizes to the north, east, south and west.
>
> Standard 14 (Compatibility) - The transitional nature of the site requires some balance between the higher density development and larger buildings to the west and south of the site, and the single family residential area to the east and north. The building serves as a transition and responds to the various building forms surrounding it. The design of the building identifies it as a part of a larger, unified development as originally envisioned for this site while at the same time, giving a nod to existing development to the north and east and to the Historic District by reducing the height of the building in comparison to the other condominium buildings, incorporating residential design elements, and through the use of high quality, natural exterior materials consistent with those found in the surrounding neighborhood and in the Historic District.
>
> (R 0316).

The findings above, and as to standards 2, 7, 8, 9, and 10, do include statements concerning compatibility with the existing condominium buildings. Plaintiffs are concerned that the findings as to the condominium building 3 do not mention compatibility with the residences and structures in the Historic District. However, the Court does not find a lack of consideration of compatibility with structures in the Historic District. Certainly, there seems to be more weight given to building 3's compatibility with buildings 1 and 2, but the Code only specifies that visual compatibility must be found. There is no requirement or specification that the level of compatibility must be equal between all structures to which it is visually related. Here, when

looking at the Phase 3 construction as a whole, which includes both condominium building 3 and the residence, the findings with respect to these standards do discuss compatibility with residences and structures in the Historic District. Thus, the Court cannot find that the absence of stated compatibility in the findings when only referencing condominium building 3 is an indication that there was no visual compatibility found between structures in the Historic District with respect those particular standards.

Based on the above, there is evidence supporting the Council's decision to overturn the HPC's decision and grant the certificate of appropriateness. There is evidence that the Council considered and found that the construction of both condominium building 3 and the accompanying residence was visually compatible with the residences and structures it was visually related to, both within and outside the Historic District. These findings do not indicate that the Council only considered condominium buildings 1 and 2, to the exclusion of the visually related buildings and structures in the Historic District.

Plaintiffs assert that the Council's findings deemed the area where building 3 is proposed to be located a "transitional" area, thus making it appropriate to look at buildings 1 and 2 outside the Historic District. They claim there is nothing in the Code that supports this argument that there is a "transitional" area within the Historic District. The Court does not view the Council's use of the term as interpreting the Code to add a transitional area to the Historic District. Rather, the use of the term indicates an acknowledgement that the location of condominium building 3 makes it visually related not only to the residences and structures within the Historic District, but also buildings 1 and 2 outside of the Historic District. There is no dispute that buildings outside the Historic District represent a contrast in style to the residences inside of the Historic District. Plaintiffs reiterate throughout their briefs that building 3 is required to be compatible with

buildings and structures it is visually related to, yet object to findings made by the Council that building 3 be an appropriate transition from the contrasting styles located within and outside the Historic District. The Court fails to see how to avoid such a contrast of styles and be compatible without building 3 acting as a transition between all structures and buildings to which it is visually related.

Plaintiffs further argue that to say condominium building 3 satisfies the 17 standards would be supporting a reading of the City Code to say a new structure "shall be visually compatible with *some of* the structures to which it is visually related," and there is no such limitation in the Code. However, the Court believes that the Council acknowledged that building 3 is visually related to buildings and structures inside and outside of the Historic District by discussing the need for building 3, and the Phase 3 construction as a whole, to transition between the styles in order to be compatible. Thus, there is no evidence in the Council's findings that they limited the reading of the Code to say a new structure only needs to be visually compatible with *some of* the structures to which it is visually related.

Plaintiffs go on to state that the Council's interpretation is at odds with the purpose of the Historic Preservation Code to "identify, preserve and protect historical areas and safeguard the City's historic and cultural heritage as embodied in its historic areas, properties, structures, sites and objects." City Code §155.01(A) and (B). Thus, the only meaning of "visual compatibility" that makes sense is that a proposed structure must be evaluated as against other structures within the Historic District.

The primary goal in interpreting a statute is to ascertain and give effect to the intent of the legislature. *People v. Roberts*, 214 Ill. 2d 106, 116 (2005). The most reliable indicator of that intent is the plain language of the ordinance itself. *Boaden v. Dept. of Law Enforcement*, 171 Ill.

2d 230, 237 (1996); *City of Chicago v. Gomez*, 256 Ill.App.3d 518, 519 (1993). A plain reading of the Code does not support that a proposed structure in the Historic District must be evaluated only as against other structures within the Historic District. Nowhere in the Code does it state that evaluating a proposed structure for visual compatibility in the Historic District is to be done to the exclusion of other structures outside of the Historic District. Plaintiffs state in their brief that the term "visually related" is broad within the Code. This indicates no limitation was intended to be placed on structures depending on their location inside or outside the Historic District. While Plaintiffs argue in their brief that allowing new construction that is within the Historic District to be visually compatible with modern structures outside the District is not "preserving", "protecting", or "safeguarding" the Historic District, such an interpretation of the Code is just not supported by the plain language of the City Code.

Finally, Plaintiffs assert the discussion and findings of the Council only indicated a desire to settle pending litigation, and such a consideration cannot override meeting the requirements of the seventeen standards set forth in section 155.08. While Section 155.11(A)(1)(c) requires the Council to apply the 17 standards in the context of its broader responsibility in promoting the public health, safety, and welfare, Plaintiffs claim the Council misinterpreted Section 155.11(A)(1)(c) to give it overriding authority to disregard the seventeen standards and enter into a settlement agreement in the first lawsuit. According to Plaintiffs, the City has no such broad authority. They compare another section of the Code, illustrating that section 159.047(E) of the Code gives the Council overriding authority to "approve any planned development regardless of type that will promote the public health, safety, or welfare of the city and its residents." In contrast, 155.11(A)(1)(c) gives no such overriding authority or references the City Council's "legislative judgment."

The Court agrees that Section 155.11(A)(1)(c) does not give the Council overriding authority to exercise its legislative judgment. However, the Council made adequate findings that the seventeen standards were met. Therefore, the Council did not engage in overriding authority by making its decision to grant the Certificate of Appropriateness. Rather, the Council found that the seventeen standards were adequately met and made additional findings as to its responsibility in promoting the public health, safety, and welfare by discussing its decision in conjunction with the settlement agreement entered into between the Developer and the City of Lake Forest. This appears to comply with the language of the Code: "[b]ut it is recognized that the Council shall apply such standards in the context of its broader responsibility in promoting, and broader perspective of, the public health, safety, welfare and in the context of its fiduciary responsibility." Section 155.11(A)(1)(c).

The Court finds that the Council's decision is not contrary to the manifest weight of the evidence. When reviewing the evidence in a light most favorable to the Council, the Court cannot say that no rational trier of fact could have agreed with the Council's decision. There is evidence that the Council's findings included considerations that building 3 was visually compatible with residences and buildings to which it was visually related to both within and outside the Historic District. These findings do not indicate that the Council only considered condominium buildings 1 and 2, to the exclusion of the visually related buildings and structures in the Historic District. There is no evidence in the Council's findings that they limited the reading of the Code to say a new structure only needs to be visually compatible with some of the structures to which it is visually related. A plain reading of the Code finds the term "visually related" to be a broad term that encompasses structures and buildings both inside and outside the

Historic District. The Code does not state that a proposed structure in the Historic District must be evaluated only as against other structures within the Historic District.

While most of Plaintiff's argument focuses on the manifest weight of the evidence standard of review, Defendants made a brief argument that this is a mixed question of fact and law that must be reviewed under the clearly erroneous standard. Where the issue presented is whether the facts meet a statutory standard, the case presents a mixed question of law and fact and the agency's decision is reviewed to determine if it is clearly erroneous. Marconi v. Chicago Heights Police Pension Board, 225 Ill.2d 497, 531 (2006). A decision is clearly erroneous when the reviewing court is left with a definite and firm conviction that a mistake has been committed. AFSCME Labor Council 31 v. IL State Labor Relations Bd, 216 Ill.2d 569, 577-78 (2005). Like the manifest weight standard, the clearly erroneous standard is "highly deferential." Niles Twp. High Sch. Dist. 219 v. Ill. Educ. Labor Rel. Bd, 387 Ill.App.3d 58, 69 (1st Dist. 2008). Under the same analysis in the preceding paragraphs, the Court finds the Council's decision was not clearly erroneous.

Accordingly, the decision of the CITY COUNCIL issued on December 5, 2022, is AFFIRMED.

SO ORDERED.

ENTER: _____
Jorge L. Ortiz, Circuit Judge

Dated _____, 2023, at Waukegan, Illinois.

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**BACKGROUND**

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Plaintiffs request reversal of the Council's decision arguing that acting as it did, the Council ignored applicable City Ordinances, policies and procedures. Thus, it was contrary to law and arbitrary and capricious. Plaintiffs further contend that the decision was against the

manifest weight of the evidence because the seventeen standards contained in the City Code were not met.

## ANALYSIS

Plaintiffs first argue the City Council's decision was arbitrary and capricious because it failed to follow its own procedures and cut the HPC out of the appeal process. An administrative decision may be overturned where it is arbitrary and capricious. *ManorCare Health Services, LLC v. Illinois Health Facilities & Services Review Bd.*, 2016 IL App (2d) 151214, ¶ 21; *Marion Hospital Corp. v. Illinois Health Facilities Planning Board,* 324 Ill.App.3d 451, 455 (2001). An administrative decision is arbitrary and capricious where the agency: "(1) relies on factors which the legislature did not intend for the agency to consider; (2) entirely fails to consider an important aspect of the problem; or (3) offers an explanation for its decision which runs counter to the evidence before the agency, or which is so implausible that it could not be ascribed to a difference in view or the product of agency expertise." *Greer v. Illinois Housing Development Authority,* 122 Ill.2d 462, 505–06 (1988). "While an agency is not required to adhere to a certain policy or practice forever, sudden and unexplained changes have often been considered arbitrary." *Greer,* 122 Ill.2d at 506. The "arbitrary and capricious" standard of review is the least demanding standard, the equivalent of the "abuse of discretion" standard. *Greer,* 122 Ill.2d at 497; *ManorCare Health Services, LLC*, 2016 IL App (2d) 151214, ¶ 21.

Plaintiffs allege the Council failed to follow its own ordinances by not receiving and hearing a report from the HPC before deliberating and making its decision. They cite Section 155.11(A)(1)(a) of the City Code stating that when considering appeals from the HPC, the Council "shall hear a report from the Chairperson of the Historic Preservation Commission or the Chairperson's designee." Section 155.03(c)(6) also states that "every determination made by the

Commission on an application shall include written findings of fact and shall specify the reason or reasons for such determination." Plaintiffs argue the HPC failed to submit a written report to the Council and failed to have a representative from the HPC at the Council meeting to explain its decision denying the Developers' application for a Certificate of Appropriateness. In making their argument, Plaintiffs state the Code mandates a written report be produced and presented by the HPC at the Council meeting. The failure to produce the written report and the failure of the Council to receive the report at its meeting "materially affected" the Plaintiffs, who will suffer a loss in property values by having non-historic buildings built near them in the Historic District.

First, Plaintiffs only cite to the first part of Section 155.11 and overlook the second part of the Section. Subsection B specifically states: "Such procedures may be modified in the discretion of the Council in order to foster the gathering of information necessary to ensure that the purposes of this chapter are achieved and to provide full and fair hearing and consideration of the issues on appeal." 155.11(B)(2). Here, the Council was provided the draft minutes of the HPC meeting and a verbatim recording of the HPC meeting. (R. 0319, pg. 4). Plaintiffs insist that a written report of the findings of the HPC should have been prepared and presented to the Council. The caselaw cited by Plaintiffs requires a showing of prejudice or that Plaintiffs were "materially affected" by the application of the Code by the Council before determining the decision was arbitrary and capricious. *See Heavner v. Ill. Racing Bd.*, 103 Ill. App.3d 1020; *Springwood Ass'. V. Health Facitilities Planning Bd.*, 269 Ill. App.3d 944 (1995). They claim they have been "materially affected" by the Council not receiving a written report from the HPC, but their argument focuses on the effect of the Council reversing the decision of the HPC in denying the COA. This is not the same as being materially affected by the lack of written report to the Council itself.

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conclusion of the one reached by the Commission is "clearly evident." *Madonia v. Houston,* 125 Ill.App.3d 713, 716 (1984). If the record contains any evidence supporting the Commission's decision . . . the decision must be sustained on review. *Fagiano v. Police Board,* 123 Ill.App.3d 963, 974 (1984); *Zaruba v. Vill. of Oak Park*, 296 Ill. App. 3d 614, 622 (1st Dist. 1998).

Plaintiffs state in their briefs that standards 1 (Height), 3 (Proportion of Openings), 4 (Rhythm of Solids to Voids), 5 (Spacing on the Street), and 6 (Rhythm of Entrance Porches) were only evaluated against the other two condominium buildings outside the Historic District. No findings were made that bldg. 3 was "visually compatible" with structures within the Historic District. Further, they assert standards 2, 7, 8, 9, 10 and 11 of the Council's findings are also directed only to the condominium building 3's visual compatibility to the other two condominium buildings.

However, a review of the records finds that there is evidence that the Council's findings included considerations that building 3 was visually compatible with residences and buildings to which it was visually related, both within and outside the Historic District. The Council adopted as part of its findings the City Staff report first presented to the HPC and then presented to the Council as part of its discussion and deliberations. As to standard 1, the finding made was the "building provides a transition from the taller condominium buildings to the west to the single family homes to the east and fully complies with the allowable height of 35 feet." As to standard 3, the finding made was "There is a regular pattern of openings around the building that are evenly spaced and aligned between the first and second levels." As to standard 5, the finding made was "the proposed building is set behind the proposed single family residence and is no longer prominently located on the Westminster streetscape. The condominium building is located behind the single family residence and is sited over 100 feet back from the streetscape." As to

standard 6, the finding made was "The front entries along the west elevation are detailed with elements such as fluted columns, entablatures, sidelights and transoms, helping to reinforce the residential character and appearance of the buildings and bringing a human scale to the design."

Further findings as to other of the seventeen standards were made, including:

> Standard 10 (Scale) – The Building Scale provisions normally applied to single family and duplex dwellings do not apply to this multi-family development. The residence is the fourth building in a Planned Development, not a stand-alone single family residence. The property is in a transitional area and the scale of the single family residence and condominium building responds to the buildings of various sizes to the north, east, south and west.
>
> Standard 14 (Compatibility) - The transitional nature of the site requires some balance between the higher density development and larger buildings to the west and south of the site, and the single family residential area to the east and north. The building serves as a transition and responds to the various building forms surrounding it. The design of the building identifies it as a part of a larger, unified development as originally envisioned for this site while at the same time, giving a nod to existing development to the north and east and to the Historic District by reducing the height of the building in comparison to the other condominium buildings, incorporating residential design elements, and through the use of high quality, natural exterior materials consistent with those found in the surrounding neighborhood and in the Historic District.
>
> (R 0316).

The findings above, and as to standards 2, 7, 8, 9, and 10, do include statements concerning compatibility with the existing condominium buildings. Plaintiffs are concerned that the findings as to the condominium building 3 do not mention compatibility with the residences and structures in the Historic District. However, the Court does not find a lack of consideration of compatibility with structures in the Historic District. Certainly, there seems to be more weight given to building 3's compatibility with buildings 1 and 2, but the Code only specifies that visual compatibility must be found. There is no requirement or specification that the level of compatibility must be equal between all structures to which it is visually related. Here, when

looking at the Phase 3 construction as a whole, which includes both condominium building 3 and the residence, the findings with respect to these standards do discuss compatibility with residences and structures in the Historic District. Thus, the Court cannot find that the absence of stated compatibility in the findings when only referencing condominium building 3 is an indication that there was no visual compatibility found between structures in the Historic District with respect those particular standards.

Based on the above, there is evidence supporting the Council's decision to overturn the HPC's decision and grant the certificate of appropriateness. There is evidence that the Council considered and found that the construction of both condominium building 3 and the accompanying residence was visually compatible with the residences and structures it was visually related to, both within and outside the Historic District. These findings do not indicate that the Council only considered condominium buildings 1 and 2, to the exclusion of the visually related buildings and structures in the Historic District.

Plaintiffs assert that the Council's findings deemed the area where building 3 is proposed to be located a "transitional" area, thus making it appropriate to look at buildings 1 and 2 outside the Historic District. They claim there is nothing in the Code that supports this argument that there is a "transitional" area within the Historic District. The Court does not view the Council's use of the term as interpreting the Code to add a transitional area to the Historic District. Rather, the use of the term indicates an acknowledgement that the location of condominium building 3 makes it visually related not only to the residences and structures within the Historic District, but also buildings 1 and 2 outside of the Historic District. There is no dispute that buildings outside the Historic District represent a contrast in style to the residences inside of the Historic District. Plaintiffs reiterate throughout their briefs that building 3 is required to be compatible with

buildings and structures it is visually related to, yet object to findings made by the Council that building 3 be an appropriate transition from the contrasting styles located within and outside the Historic District. The Court fails to see how to avoid such a contrast of styles and be compatible without building 3 acting as a transition between all structures and buildings to which it is visually related.

Plaintiffs further argue that to say condominium building 3 satisfies the 17 standards would be supporting a reading of the City Code to say a new structure "shall be visually compatible with *some of* the structures to which it is visually related," and there is no such limitation in the Code. However, the Court believes that the Council acknowledged that building 3 is visually related to buildings and structures inside and outside of the Historic District by discussing the need for building 3, and the Phase 3 construction as a whole, to transition between the styles in order to be compatible. Thus, there is no evidence in the Council's findings that they limited the reading of the Code to say a new structure only needs to be visually compatible with *some of* the structures to which it is visually related.

Plaintiffs go on to state that the Council's interpretation is at odds with the purpose of the Historic Preservation Code to "identify, preserve and protect historical areas and safeguard the City's historic and cultural heritage as embodied in its historic areas, properties, structures, sites and objects." City Code §155.01(A) and (B). Thus, the only meaning of "visual compatibility" that makes sense is that a proposed structure must be evaluated as against other structures within the Historic District.

The primary goal in interpreting a statute is to ascertain and give effect to the intent of the legislature. *People v. Roberts*, 214 Ill. 2d 106, 116 (2005). The most reliable indicator of that intent is the plain language of the ordinance itself. *Boaden v. Dept. of Law Enforcement*, 171 Ill.

2d 230, 237 (1996); *City of Chicago v. Gomez*, 256 Ill.App.3d 518, 519 (1993). A plain reading of the Code does not support that a proposed structure in the Historic District must be evaluated only as against other structures within the Historic District. Nowhere in the Code does it state that evaluating a proposed structure for visual compatibility in the Historic District is to be done to the exclusion of other structures outside of the Historic District. Plaintiffs state in their brief that the term "visually related" is broad within the Code. This indicates no limitation was intended to be placed on structures depending on their location inside or outside the Historic District. While Plaintiffs argue in their brief that allowing new construction that is within the Historic District to be visually compatible with modern structures outside the District is not "preserving", "protecting", or "safeguarding" the Historic District, such an interpretation of the Code is just not supported by the plain language of the City Code.

Finally, Plaintiffs assert the discussion and findings of the Council only indicated a desire to settle pending litigation, and such a consideration cannot override meeting the requirements of the seventeen standards set forth in section 155.08. While Section 155.11(A)(1)(c) requires the Council to apply the 17 standards in the context of its broader responsibility in promoting the public health, safety, and welfare, Plaintiffs claim the Council misinterpreted Section 155.11(A)(1)(c) to give it overriding authority to disregard the seventeen standards and enter into a settlement agreement in the first lawsuit. According to Plaintiffs, the City has no such broad authority. They compare another section of the Code, illustrating that section 159.047(E) of the Code gives the Council overriding authority to "approve any planned development regardless of type that will promote the public health, safety, or welfare of the city and its residents." In contrast, 155.11(A)(1)(c) gives no such overriding authority or references the City Council's "legislative judgment."

The Court agrees that Section 155.11(A)(1)(c) does not give the Council overriding authority to exercise its legislative judgment. However, the Council made adequate findings that the seventeen standards were met. Therefore, the Council did not engage in overriding authority by making its decision to grant the Certificate of Appropriateness. Rather, the Council found that the seventeen standards were adequately met and made additional findings as to its responsibility in promoting the public health, safety, and welfare by discussing its decision in conjunction with the settlement agreement entered into between the Developer and the City of Lake Forest. This appears to comply with the language of the Code: "[b]ut it is recognized that the Council shall apply such standards in the context of its broader responsibility in promoting, and broader perspective of, the public health, safety, welfare and in the context of its fiduciary responsibility." Section 155.11(A)(1)(c).

The Court finds that the Council's decision is not contrary to the manifest weight of the evidence. When reviewing the evidence in a light most favorable to the Council, the Court cannot say that no rational trier of fact could have agreed with the Council's decision. There is evidence that the Council's findings included considerations that building 3 was visually compatible with residences and buildings to which it was visually related to both within and outside the Historic District. These findings do not indicate that the Council only considered condominium buildings 1 and 2, to the exclusion of the visually related buildings and structures in the Historic District. There is no evidence in the Council's findings that they limited the reading of the Code to say a new structure only needs to be visually compatible with some of the structures to which it is visually related. A plain reading of the Code finds the term "visually related" to be a broad term that encompasses structures and buildings both inside and outside the

Historic District. The Code does not state that a proposed structure in the Historic District must be evaluated only as against other structures within the Historic District.

While most of Plaintiff's argument focuses on the manifest weight of the evidence standard of review, Defendants made a brief argument that this is a mixed question of fact and law that must be reviewed under the clearly erroneous standard. Where the issue presented is whether the facts meet a statutory standard, the case presents a mixed question of law and fact and the agency's decision is reviewed to determine if it is clearly erroneous. Marconi v. Chicago Heights Police Pension Board, 225 Ill.2d 497, 531 (2006). A decision is clearly erroneous when the reviewing court is left with a definite and firm conviction that a mistake has been committed. AFSCME Labor Council 31 v. IL State Labor Relations Bd, 216 Ill.2d 569, 577-78 (2005). Like the manifest weight standard, the clearly erroneous standard is "highly deferential." Niles Twp. High Sch. Dist. 219 v. Ill. Educ. Labor Rel. Bd, 387 Ill.App.3d 58, 69 (1st Dist. 2008). Under the same analysis in the preceding paragraphs, the Court finds the Council's decision was not clearly erroneous.

Accordingly, the decision of the CITY COUNCIL issued on December 5, 2022, is AFFIRMED.

SO ORDERED.

ENTER: Jorge L. Ortiz

Jorge L. Ortiz, Circuit Judge

Dated _____, 2023, at Waukegan, Illinois.