



12 South Center Street  
Bensenville, IL 60106

Office: 630.350.3404  
Fax: 630.350.3438  
[www.bensenville.il.us](http://www.bensenville.il.us)

VILLAGE BOARD

August 7, 2020

President  
Frank J. Serrano

Board of Trustees  
Rosa Camarota  
Ann Fragoz  
Marie L. Frey  
Melanie Lomax  
Nicholas Mancala, Jr.  
Amanda Perez

Village Clerk  
Corey Williamsen

Village Manager  
Mark Summers

Mr. Douglas Tello  
246 Park Street  
Bensenville, Illinois 60106

Re: August 4, 2020 FOIA Request

Dear Mr. Tello:

I am pleased to help you with your August 4, 2020 Freedom of Information Act ("FOIA"). The Village of Bensenville received your request on August 4, 2020. You requested copies of the items indicated below:

*"Please provide information for 238 Park Ave. in Bensenville. Include unpaid fines, liens, water utility and any other pertinent information to the future purchase of this property."*

After a search of Village files, the following information was found responsive to your request:

- 1) DuPage County Recording No. R2012-090183. (18 pgs.)
- 2) Village of Bensenville Statement of Lien Claim Recorded No. R2013-144776. (3 pgs.)
- 3) Village of Bensenville Correction Notice for Inspection No. 72898. (1 pg.)
- 4) Village of Bensenville Correction Notice for Inspection No. 76468. (1 pg.)
- 5) Village of Bensenville Invoice No. 201661. (1 pg.)
- 6) Village of Bensenville Invoice No. 201672. (1 pg.)

These are all the records found responsive to your request.

Do not hesitate to contact me if you have any questions or concerns in connection with this response.

Very truly yours,

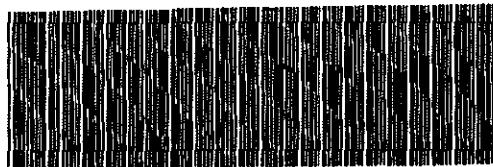
  
Corey Williamsen  
Freedom of Information Officer  
Village of Bensenville



**FRED BUCHOLZ**

**Du Page County Recorder  
421 North County Farm Road  
Wheaton, IL 60187**

**(630) 407-5400**



**FRED BUCHOLZ  
DUPAGE COUNTY RECORDER  
JUL 13 2012 RHSP 9:25 AM  
OTHER 03-13-322-010  
018 PAGES R2012-090183**

**RECORDING COVER PAGE**

DEED  OTHER  UCC  PLAT  RE-RECORD

**\*Please note - This cover page has been attached to the document for recording purposes. It is a permanent part of the document and has been included in the page count.**

**AGREEMENT BETWEEN THE VILLAGE OF BENSENVILLE AND JUAN FLORES**  
**REGARDING THE PROPERTIES AT 238 PARK STREET AND 237 MARION COURT,**  
**BENSENVILLE, ILLINOIS 60106**

THIS AGREEMENT, made and entered into as of the 27<sup>th</sup> day of June, 2012, by and between the VILLAGE OF BENSENVILLE, an Illinois municipal corporation (hereinafter the "VILLAGE") and JUAN FLORES (hereinafter "FLORES").

WITNESSETH:

WHEREAS, the VILLAGE is a duly organized and existing Illinois municipality pursuant to the Illinois Municipal Code, 65 ILCS 5/1-1-1 et seq.; and

WHEREAS, the VILLAGE has the authority to enter into this Agreement pursuant to the Illinois Municipal Code, 65 ILCS 5/2-2-12; and

WHEREAS, FLORES is the owner and title holder of the real property located at 238 Park Street and 237 Marion Court, Bensenville, Illinois 60106 (hereinafter collectively referred to as the "Properties"); and

WHEREAS, 238 Park Street is less than three (3) stories in height; and

WHEREAS, 238 Park Street sustained substantial fire damage and has been uninhabited since 2001; and

WHEREAS, the VILLAGE has determined that the building at 238 Park Street is open and vacant and an immediate and continuing hazard to the Community; and

WHEREAS, the VILLAGE has determined 238 Park Street is in need of demolition; and

WHEREAS, the VILLAGE sought to demolish 238 Park Street pursuant to its authority under the Illinois Municipal Code, 65 ILCS 5/11-31-1(e); and

WHEREAS, the VILLAGE posted a Notice of Demolition at 238 Park Street on March 23, 2012; and

WHEREAS, the VILLAGE caused to be sent on April 2, 2012, by certified mail, return receipt requested, a Notice to Remediate to FLORES and all other beneficial owners, owners of record or lien holders, in which the VILLAGE stated its intent to demolish, repair, or enclose the building if the owners did not take action, a copy of the Notice to Remediate is attached hereto and incorporated herein as Exhibit "A"; and

WHEREAS, the Notice to Remediate was recorded with the DuPage County Recorder's Office on April 2, 2012; and

WHEREAS, on April 4, 5, and 6 2012, the Village caused to be published, in a newspaper published in the municipality where the building is located, that being the Daily Herald, a Notice setting forth (i) the permanent tax index number and the address of the building, (ii) a statement that 238 Park Street is open and vacant and constitutes an immediate and continuing hazard to the community, and (iii) a statement that the Village intends to demolish, repair, or enclose the building or remove and garbage, debris, or other hazardous, noxious, or unhealthy substances or materials if the owner or owners or lien holders of record fail to do so, a copy of the Notice of Publication is attached hereto and incorporated herein as Exhibit "B"; and

WHEREAS, no owner, beneficial owner, or lien holder, after the Notice to Remediate was sent by the Village, proceeded to repair or remodel 238 Park Street so that 238 Park Street complied with the Village Building Code and ceased being an immediate and continuing hazard to the Community; and

WHEREAS, FLORES received the VILLAGE'S Notice to Remediate and was aware of the VILLAGE'S intention and authority to demolish 238 Park Street; and

WHEREAS, the VILLAGE complied with the statutory requirements of the Illinois Municipal Code, 65 ILCS 5/11-31-1(e) and the VILLAGE obtained the authority to demolish 238 Park Street, pursuant to Section 5/11-31-1(e), on May 6, 2012; and

WHEREAS, FLORES, the owner, beneficial owner or lien holder have not filed the appropriate documents with the Court seeking to prevent the VILLAGE from demolishing 238 Park Street; and

WHEREAS, the VILLAGE possesses the statutory authority to demolish 238 Park Street; and

WHEREAS, FLORES currently resides at 237 Marion Court, Bensenville, Illinois 60106, which is an accessory structure to the building located at 238 Park Street; and

WHEREAS, the 237 Marion Court shares the same Property Index Number, 03-13-322-010, as 238 Park Street; and

WHEREAS, on April 15, 1998, the VILLAGE obtained a Judgment finding that 237 Marion Court was an unlawful nonconforming use and permanently enjoining FLORES, "from occupying or allowing the occupancy of the accessory structures located at the rear of 234 and 238 Park Street . . ." (hereinafter the "Judgment"); the Judgment in *Flores v. Bensenville*, 97 MR 330 is attached hereto and incorporated herein as Exhibit "C"; and

WHEREAS, FLORES has continually violated, and is currently in violation of, the Judgment by residing in 237 Marion Court; and

WHEREAS, the VILLAGE, on May 15, 2012, met with FLORES to discuss the Properties; and

WHEREAS, the Parties have reached an Agreement that is designed to remove 238 Park Street from being an immediate and continuing threat to the Community, by requiring FLORES to demolish 238 Park Street, and, in consideration of the demolition of 238 Park Street, FLORES is allowed to continue to reside at 237 Marion Court, pursuant to the terms and conditions of the Agreement set forth hereinafter.

NOW, THEREFORE, in consideration of the foregoing recitals and of the covenants and conditions hereinafter contained, the adequacy and sufficiency of which the Parties hereto hereby stipulate, the Parties hereto agree as follows:

**SECTION ONE:** That the recitals set forth above are incorporated herein and made a part hereof by reference.

**SECTION TWO:** That the term of this Agreement shall commence on June 27, 2012.

**SECTION THREE:** That FLORES shall apply or cause an application to be applied for, on or before July 13, 2012, for the requisite VILLAGE demolition and other Permits. FLORES shall contact Scott Viger, VILLAGE Director of Community Development for the requisite Permits.

**SECTION FOUR:** That within ten (10) days of the receipt from the VILLAGE of the requisite Permits, FLORES shall demolish the property located at 238 Park Street.

**SECTION FIVE:** That after the property located at 238 Park Street has been completed, FLORES is required to grade the property located at 238 Park Street, plant grass seed on the property located at 238 Park Street and maintain the planted grass.

**SECTION SIX:** That the demolition of 238 Park Street must be completed on or before August 1, 2012.

**SECTION SEVEN:** That in consideration of the demolition of 238 Park Street, FLORES may continue to reside at the property located at 237 Marion Court.

**SECTION EIGHT:** That upon FLORES'S failure to abide by any provisions of this Agreement or the timeline set forth in this Agreement, the VILLAGE shall have the authority, pursuant to this Agreement and the Illinois Municipal Code, to immediately demolish 238 Park Street.

**SECTION NINE:** That upon FLORES'S failure to abide by the provisions of this Agreement or the timeline set forth in this Agreement, the VILLAGE shall immediately, upon written notification to FLORES, proceed with the demolition of 238 Park Street.

**SECTION TEN:** That the cost of the demolition of 238 Park Street shall be paid for by FLORES and, if unpaid, shall be a lien on 238 Park Street, pursuant to the Illinois Municipal Code.

**SECTION ELEVEN:** That upon FLORES'S failure to abide by the provisions of this Agreement or the timeline set forth in this Agreement, the VILLAGE may enforce the Judgment as provided for in Exhibit "C".

**SECTION TWELVE:** That upon FLORES'S failure to abide by the provisions of this Agreement or the timeline set forth in this Agreement, FLORES shall, upon written Notice of the Village sent via U.S. Mail notifying FLORES of a breach of this Agreement and directing FLORES to vacate the property located at 237 Marion Court, and without any further Notice or Court Action taken by the VILLAGE, vacate the property located at 237 Marion Court within five (5) days of the mailing of the Notice. The VILLAGE, upon FLORES'S failure to vacate the property located at 237 Marion Court, shall have the legal right to enter on to the property located at 236 Marion Court for the purpose of forcefully removing FLORES, any immediate family members, and any personal property from the property located at 237 Marion Court.

**SECTION THIRTEEN:** That the VILLAGE only allows FLORES, pursuant to the terms of this Agreement, to reside at the property located at 237 Marion Court, which is an unlawful nonconforming use; and upon the sale, transfer, abandonment, or any other process in which FLORES ceases to reside at the property located at 237 Marion Court, future residency by any individual of the property located at 237 Marion Court is strictly prohibited and, pursuant to the Judgment, the property located at 237 Marion Court shall continue to be deemed an unlawful nonconforming use.

**SECTION FOURTEEN:** That this Agreement shall be recorded with the Office of the Recorder for DuPage County.

**SECTION FIFTEEN:** That FLORES hereby releases, waives and forever discharges the VILLAGE, its Trustees, Officers, employees, attorneys and agents from and against any and all claims, losses, demands, rights, causes of action or otherwise resulting from, or arising out of, the demolition of 238 Park Street or the enforcement of the Judgment or any activities related thereto. Further, FLORES hereby agrees that the VILLAGE, its Trustees, Officers, employees, its sureties shall incur no liability for loss, damage, or financial responsibility arising out of, or in any manner, connected with any damages, injury or loss either to FLORES or 238 Park Street or 237 Marion Court or activities related thereto arising out of this Agreement or the VILLAGE'S right under the Illinois Municipal Code.

**SECTION SIXTEEN:** That FLORES, his/her successors, agents, officers and assigns, shall indemnify and hold harmless the VILLAGE, its Trustees, Officers, agents, employees, successors and assigns, from and against any and all liability, any and all injury, actions, claims, assertions of liability, losses, demands, and causes of action or lawsuits, and shall waive any claims or causes of action, arising out of related to or resulting in any way from the demolition of 238 Park Street or the enforcement of the Judgment or activities related thereto.

**SECTION SEVENTEEN:** That this Agreement sets forth the entire understanding of the Parties and may only be amended, modified or terminated by a written instrument signed by the Parties except as herein otherwise provided.

**SECTION EIGHTEEN:** That the invalidity of any provision of this Agreement shall not impair the validity of any other provision. If any provision of this Agreement is determined

by a court of competent jurisdiction to be unenforceable, that provision will be deemed severable and the Agreement may be enforced with that provision severed or as modified by the court.

**SECTION NINETEEN:** That this Agreement shall be interpreted and construed in accordance with the laws of the State of Illinois.

**SECTION TWENTY:** That the 18<sup>th</sup> Judicial Circuit of DuPage County shall be the proper venue for any action arising out of this Agreement.

**SECTION TWENTY ONE:** That FLORES shall pay the court costs and attorney fees of the VILLAGE in the event the VILLAGE prevails in any litigation arising from 1) this AGREEMENT, 2) the VILLAGE'S authority to demolish the Property pursuant to the Illinois Municipal Code, or 3) an action by the VILLAGE to enforce the Judgment.

**SECTION TWENTY TWO:** That all notices hereunder shall be in writing and must be served either personally, by e-mail transmission or U.S. Mail to:

(1) VILLAGE at:

Michael Cassady, Village Manager  
12 S. Center Street  
Bensenville, IL 60106

With copy to:

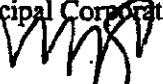
Scott Hadala, Attorney  
Bond Dickson & Associates, P.C.  
400 S. Knoll Street, Unit C  
Wheaton, IL 60187  
Scotthadala@bond-dickson.com

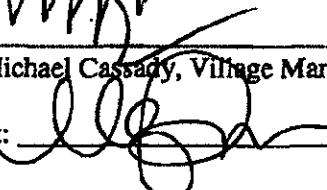
(2) FLORES at:

Juan Flores  
237 Marion Court  
Bensenville, IL 6010

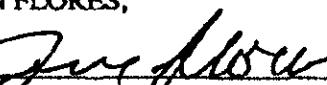
IN WITNESS WHEREOF, the parties hereto have read and understood the terms of the Agreement and, upon their signatures, knowingly agree to the terms of this Agreement.

VILLAGE OF BENENVILLE, an Illinois  
Municipal Corporation,

By:   
Michael Cassidy, Village Manager

Attest: 

JUAN FLORES,

By:   
Juan Flores

Attest: 

F:\PKB\Bensenville\Agreements\238 Park Street Agreement.SAH.5.17.12.docx



# VILLAGE OF BENSENVILLE

Village Board  
President  
Frank Soto

April 2, 2012

## NOTICE TO REMEDIATE

Trustees  
Morris Barlet  
Robert 'Bob' Jerecki  
Marin O'Connell  
Oronzo Peconio  
JoEllen Röder  
Henry Waszeler

Village Clerk  
Susan V. Janowik

Village Manager  
Michael J. Cassidy

To: Juan Flores  
237 Marion Court  
Bensenville, Illinois 60106

Antonia Flores  
237 Marion Court  
Bensenville, Illinois 60106

Illinois Regional Bank National Association  
105 S. York Street  
Elmhurst, Illinois 60126

JP Morgan Chase Bank  
Retail Loan Servicing  
KY2-1606  
P.O. Box 11606  
Lexington, KY 40576-1606

JP Morgan Chase Bank  
120 E. Wesley Street  
Wheaton, IL 60187

LaSalle Bank, FSB  
4747 W. Irving Park Road  
Chicago, IL 60641

Bank of America  
135 South LaSalle Street, Suite 140  
Chicago, IL 60603

Re: 238 Park Street,  
Bensenville, Illinois 60106  
P.I.N. 03-13-322-010  
Our File No.: 09-983

PLEASE TAKE NOTICE that the Village of Bensenville seeks to demolish the property at 238 Park Street, Bensenville, Illinois, P.I.N. 03-13-322-010 (the "Property"), pursuant to the Illinois Municipal Code, 65 ILCS 5/11-31-1(e) unless you immediately remediate the property.

There are numerous Code violations on the Property. The Property is uninhabitable and has been abandoned for some time. Clearly, given the fact that this parcel is immediately adjacent to both

Village of Bensenville  
12 South Center Street • Bensenville, IL 60106  
Phone: 630-766-8200 • Fax: 630-594-1105  
[www.bensenville.il.us](http://www.bensenville.il.us)



238 Park Street  
4/2/12  
Page 2

residential and business properties, this constitutes a serious threat to the health, safety and welfare of the residents of the Village. In connection therewith, you have been contacted by the Village previously regarding these concerns. To date, those issues have not been abated and/or addressed.

Accordingly, you have left the Village with no alternative but to exercise its statutory police powers and to abate the nuisance. The Village will, under State statute and its Village Code, lien the property for the cost of said demolition, litigation and other related expenses. If the Code violations are not immediately addressed, the Village will demolish the aforesaid property no sooner than thirty (30) days from the date of mailing this notice.

Should you wish to remedy this situation, please contact Scott Viger, Director of Community & Economic Development, at Village Hall (630) 350-3411. Should you have any other questions regarding this matter, please contact our Office.

VILLAGE OF BENSENVILLE

By:   
\_\_\_\_\_  
Scott A. Hadala, One of its Attorneys

Prepared by:

( Bond, Dickson & Associates, P.C.  
400 S. Knoll Street, Unit C  
Wheaton, IL 60187  
(630) 681-1000 )

F:\PKB\Bensenville\COVE\238 Park Street\2nd Demo Process\NOTICE TO REMEDIATE.SAH.3.30.12.doc

**CERTIFICATE OF SERVICE**

Under penalties as provided by law pursuant to 735 ILCS 5/15-1502.5, the undersigned certifies that she served the above-referenced document, NOTICE TO REMEDIATE, by sending the same to the parties listed in the above-referenced document, NOTICE TO REMEDIATE, via Certified U.S. Mail, Return Receipt Requested, on April 2, 2012.



SUBSCRIBED and SWORN to  
before me this 2nd day of April, 2012.



\_\_\_\_\_  
NOTARY PUBLIC



Submitted by:  
HELEN ELLISON

Return To:  
COLLATERAL SERVICES  
LASALLE BANK NA  
4747 WEST IRVING PARK ROAD  
Chicago, IL 60641

Loan Number: 09207402223213

== Fred Bucholz ==

DUPAGE COUNTY RECORDER  
06-20-2007 8:06 AM  
OTHER RHSP 03-13-322-010  
001 R2007-113863

RELEASE OF MORTGAGE  
Illinois

KNOW ALL MEN BY THESE PRESENTS that, LASALLE BANK NA holder of a certain mortgage, whose parties, dates and recording information are below, does hereby acknowledge that it has received full payment and satisfaction of the same, and in consideration thereof, does hereby cancel and discharge said mortgage.

Original Mortgagor(S): JUAN FLORES AND ANTONIA FLORES, HIS WIFE, AS JOINT TENANTS

Original Mortgagor(S): LASALLE BANK NA

Original Instrument No: R2002-181231

Date of Note: 06/28/2002

Original Recording Date: 07/16/2002

Property Address:  
238 S PARK AVENUE  
BENSENVILLE, IL 60106

Legal Description: LOT 11 IN BLOCK 2 IN WILLIAM L KORTHAUERS ADDITION TO BENSENVILLE BEING A SUBDIVISION OF PART OF THE SW 1/4 OF SECTION 13, TOWNSHIP 40 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED 01/03/03 AS DOCUMENT NO. 50837, IN DUPAGE COUNTY, ILLINOIS.

Pin #: 03-13-322-010

County: DuPage County, State of Illinois

IN WITNESS WHEREOF, the undersigned has caused this instrument to be executed on this date of 06/19/2007.

LASALLE BANK NA  
— KayLynn Dalebout —  
By: KAYLYNN DALEBOUT  
Title: VICE PRESIDENT LOAN  
DOCUMENTATION

State of UT  
City/County of LOGAN }

This instrument was acknowledged before me on 06/19/2007 by KAYLYNN DALEBOUT, AUTHORIZED OFFICER of LASALLE BANK NA, on behalf of said corporation.  
Witness my hand and official seal on the date hereinabove set forth.

== Lyndi Smith ==  
Notary Public: LYNDI SMITH  
My Commission Expires:  
12/29/2010  
Resides in: LOGAN

**PUBLIC NOTICE**  
**NOTICE OF DEMOLITION**  
BY THE VILLAGE OF BENSONVILLE  
TO THE RESIDENTS OF BENSONVILLE,  
ILLINOIS, THAT THE following building located at 1708 Park  
Street, Bensonville, Illinois,  
P.L.N. #13-32-214 is unsafe  
and vacant and constitutes a  
hazard to the health and safety  
of the community.  
Pursuant to the Illinois Mu-  
nicipal Code, as in ILCS 511-  
310.1(a), the building is de-  
clared to be dangerous.  
The building located at 228 Prairie  
Street, Bensonville, Illinois,  
P.L.N. #13-32-214, for VG  
Code Code violations, the  
same constitutes a hazard  
to the health, safety  
and welfare of the residents  
of the Village of Bensonville.  
If the owner, owners or ten-  
ants of the property do not  
abate the property  
within 30 days of this Notice,  
Published April 2, 3, 4, 2017 (479676)

## **CERTIFICATE OF PUBLICATION**

**Paddock Publications, Inc.**

# Daily Herald

Corporation organized and existing under and by virtue of the laws of the State of Illinois, DOES HEREBY CERTIFY that it is the publisher of the **DAILY HERALD**. That said **DAILY HERALD** is a secular newspaper and has been circulated daily in the Village(s) of Addison, Bensenville, Bloomingdale, Carol Stream, Glendale Heights, Glen Ellyn, Itasca, Keeneyville, Lisle, Lombard, Medinah, Naperville, Oak Brook, Oakbrook Terrace, Roselle, Villa Park, Warrenville, West Chicago, Wheaton, Winfield, Wood Dale

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**County(ies) of DuPage**

and State of Illinois, continuously for more than one year prior to the date of the first publication of the notice hereinafter referred to and is of general circulation throughout said Village(s), County(ies) and State.

I further certify that the DAILY HERALD is a newspaper as defined in "an Act to revise the law in relation to notices" as amended in 1992 Illinois Compiled Statutes, Chapter 7150, Act 5, Section 1 and 5. That a notice of which the annexed printed slip is a true copy, was published April 4, 5, 6, 2012 in said DAILY HERALD.

IN WITNESS WHEREOF, the undersigned, the said PADDOCK PUBLICATIONS, Inc., has caused this certificate to be signed by, this authorized agent, at Arlington Heights, Illinois.

PADDOCK PUBLICATIONS, INC.  
DAILY HERALD NEWSPAPERS

BY Paula Baltzyn  
Authorized Agent

Control # 4296767



MEMORANDUM OF JUDGMENT  
STATE OF ILLINOIS COUNTY OF DU PAGE

MEMORANDUM  
OF JUDGMENT

18TH JUDICIAL CIRCUIT COURT  
OF DU PAGE COUNTY  
TO  
RECORDER OF DU PAGE COUNTY

(Please Type or Print Information)

J.P. "RICK" CARNEY  
DUPAGE COUNTY RECORDER  
AUG. 03, 1999 3:26 PM  
OTHER 03-13-322-010  
006 PAGES R1999-169925

(Reserved for Recorder's Use Only)

JUDGMENT:  RENDERED  REVIVED

IN FAVOR OF (name)

Village of Bensenville  
700 N. Irving Park Road  
Bensenville, Illinois 60106

AGAINST (name and last known address. If address is unknown, please so state)

Juan Flores  
238 Park Street  
Bensenville, Illinois 60106  
LOT 11, BLK 2, WM KORTHAUSER ADD. TO BEAR, A SUBDIVISION OF PT SW 1/4 SEC 13, Twp 40N,  
R 11, EAST OF 2<sup>nd</sup> MAIN MERIDIAN, FOR PLAT NO. 50837 REC. 1/3/1892

Permanent Index Number 03-13-322-010

DATE OF JUDGMENT 15-04-98 See Attached 97 MR 330  
DAY MO. YR. AMOUNT COURT CASE NUMBER

Prepared by and mailed to:  
Mail recorded instrument to:

Village of Bensenville  
Attn: Peter W. Ostling  
700 N. Irving Park Road  
Bensenville, IL 60106

DATED \_\_\_\_\_

SIGNED Ronnie M. Martin JUDGE

DIVISION Chancery Division

J.P. "RICK" CARNEY, DU PAGE COUNTY RECORDER  
421 N. COUNTY FARM ROAD, BOX 936, WHEATON, ILLINOIS 60189

EXHIBIT

C

J. P. "Rick" Carney

R1999169925

DuPage County Recorder

IN THE CIRCUIT COURT FOR THE EIGHTEENTH JUDICIAL CIRCUIT  
WHEATON, DU PAGE COUNTY, ILLINOIS

JUAN FLORES, }  
Plaintiff, }  
vs. } No. 97 MR 330  
VILLAGE OF BENSENVILLE, }  
A Municipal Corporation, }  
Defendant. }

**MEMORANDUM OPINION AND ORDER**

This matter came before the Court for hearing on the motion of Defendant VILLAGE OF BENSENVILLE ("BENSENVILLE") for judgment on the pleadings. The complaint filed by Plaintiff JUAN FLORES ("FLORES") seeks administrative review of the decision of BENSENVILLE's Village Board affirming the prior decision of BENSENVILLE's Code Appeals Board to deny appeal of an order to vacate accessory structures located at the rear of 234 and 238 Park Street in the Village of Bensenville. BENSENVILLE counterclaimed for a permanent injunction barring occupancy of the subject premises.

## **FACTS**

The record of proceedings before the Code Appeals Board and the exhibits attached to various pleadings establish certain facts. The affidavit of Dorothy Korthauer established that in 1943, when the Affiant moved to the area, there were people living in the subject structures,

and that the structures were never used as anything but residences.

The applicable Village Zoning Ordinance of 1941 defines "BUILDING AREA" as "The maximum horizontal projected area of a building and its accessory buildings, excluding open steps, terraces and cornices projecting not more than thirty (30) inches." "ACCESSORY BUILDING" is defined as "A subordinate building or portion of the main building which is located on and occupies not more than 10% of the lot on which the main building is situated, the use of which is clearly incidental to the use of the main building."

The use of the subject structures as residences is unlawful under the current BENSENVILLE zoning ordinance.

Plaintiff FLORES was found guilty of violating BENSENVILLE's orders to vacate the accessory structures.

#### ISSUES

FLORES contends that the Code Appeal Board improperly found that the finding of guilty was res judicata on the issue, and alternatively that BENSENVILLE was guilty of laches in failing to enforce its ordinances for a period in excess of 50 years. BENSENVILLE argues that the occupancy of the structures was an illegal non-conforming use, and that the decision of BENSENVILLE should be upheld.

Resolution of the issues depends on the status of the occupancy of the accessory structures. The 2nd District Appellate Court recently restated the law regarding non-

conforming uses in Bainter v. Village of Algonquin, 675 N.E.2d 120, 285 Ill.App.3d 745:

A legal nonconforming use is a nonpermitted use under currently applicable zoning ordinances which predates the applicable zoning ordinance and is legalized on that basis. [Citations] A use which was not lawful at its inception is not a legal nonconforming use and thus cannot be protected from elimination for violation of present zoning ordinances. [Citations] The facts of each particular case ultimately determine whether an owner is entitled to the protection of a legal nonconforming use.

Similarly, the Illinois Supreme Court in Jacobson v. Village of Wilmette, 403 Ill.2d 85, 85 N.E.2d 753, stated:

A 'nonconforming use' is defined by the ordinances to be a building or premises occupied by use that does not conform to the regulations of the use district in which it is situated. The ordinances provide, however, that the lawful use of a building or premises existing at the time of the adoption of the ordinance may be continued, although such use does not conform to the provisions thereof, and such use may be extended throughout the building or premises.

Applying these legal tenets, the Court in Welch v. City of Evanston (409 N.E.2d 450, 87 Ill.App.3d 1017) found that a basement apartment was illegal at its inception in 1925 under the existing 1921 zoning ordinance, and affirmed the validity of the ordinance existing in 1980.

In the instant case, the earliest date upon which occupancy of the accessory structures as residences was established was 1943. Under the 1941 zoning ordinance, the use of the accessory buildings as residences was not a lawful use. There was neither testimony nor affidavit before the Code Appeals Board that the accessory structures ever constituted a legal non-conforming use.

The mere passage of time does not transform the unlawful use into a legal use, nor does it establish that BENSENVILLE was guilty of laches. FLORES contends that he has been damaged, but the pleading require a contrary inference. The leases appended to the Complaint establish that FLORES has obtained rental income from the accessory structures which would be impermissible under the zoning ordinances in effect either in 1941 or at the present time. Rather than being injured, FLORES has experienced a windfall of rental income.

The proceedings in which FLORES was found guilty of disobeying an order to vacate the accessory structures were argued before the Code Appeals Board, but there is no indication in the record that those proceedings were the basis for the Board's decision. Indeed, even without considering those proceedings there was ample testimony, evidence and argument upon which the decision could be based.

#### ORDER

For the foregoing reasons, the decision of BENSENVILLE's Village Board affirming the prior decision of BENSENVILLE's Code Appeals Board to deny appeal of an order to vacate accessory structures located at the rear of 234 and 238 Park Street in the Village of Bensenville is affirmed.

Judgment on the Pleadings is entered in favor of Defendant VILLAGE OF BENSENVILLE and against Plaintiff JUAN

FLORES, and Plaintiff is permanently enjoined from occupying or allowing the occupancy of the accessory structures located at the rear of 234 and 238 Park Street in the Village of Bensenville as residences.

ENTER: \_\_\_\_\_

JUDGE

Date: April 15, 1998

5

J. P. "Rick" Carney

R1999169925

DuPage County Recorder

FRED BUCHOLZ R2012-090183 DUPAGE COUNTY RECORDER



**VILLAGE OF BENSENVILLE  
STATEMENT OF LIEN CLAIM**

TO: Juan and Antonia Flores  
234 Park Street  
Bensenville, IL 60106

**FRED BUCHOLZ**  
**DUPAGE COUNTY RECORDER**  
**OCT. 16, 2013**      **RHSP**      **1:31 PM**  
**OTHER**      **08-18-322-010**  
**003 PAGES**      **R2013-144776**

| For Recorder's Use Only

This Statement of Lien Claim is recorded for demolition costs and expenses relating to the demolition of the structure located at 238 Park Street Bensenville, Illinois 60106 incurred by the Village of Bensenville in the amount of Nineteen Thousand One Hundred dollars (\$19,100) on May 1-2, 2013.

The authority for this Statement of Lien Claim is found under Agreement Recorded as R2012090183 and in the Illinois Municipal Code, 65 ILCS 5/11-31-1. This Statement of Lien Claim is hereby recorded against the following property:

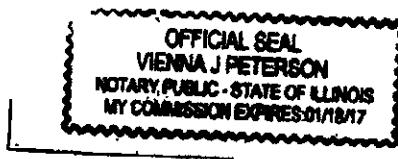
See Legal Description, P.I.N. and Common Address attached.

Stan River-Taylors

**Lisa Rivera-Trujillo  
Village Clerk  
Village of Bensenville**

SUBSCRIBED and SWORN to before me  
this 11 day of October, 2017.

**NOTARY PUBLIC**



PREPARED BY & MAIL RECORDED COPIES TO:  
Patrick K. Bond  
Bond, Dickson & Associates, P.C.  
400 S. Knoll Street, Unit C  
Wheaton, IL 60187  
patrickbond@bond-dickson.com  
630-681-1000

f:\pkb\bensenville\238 s park\statement of lien claim 238 park.docx

EXHIBIT A

Legal Description, P.I.N. and Common Address

LOT 11 IN BLOCK 2 IN WM. L. KORTHAUER'S ADD. TO BENSENVILLE, BEING A SUBDIVISION OF PART OF THE SOUTHWEST QUARTER OF SECTION 13, TOWNSHIP 40 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED JANUARY 3, 1893 AS DOCUMENT 50837, IN DU PAGE COUNTY, ILLINOIS.

P.I.N.: 03-13-322-010

Address: 238 S. Park Street  
Bensenville, IL 60106



# Invoice

Date	Invoice #
9/10/2013	770.1

485 N. Podlin Drive  
Franklin Park, IL 60131  
Phone: (708) 344-3869 or (312) 782-0003  
Fax: (708) 344-3206

Bill To
Village of Bensenville 12 S Center Street Bensenville, IL 60106

Terms	Due Date	Project
Due on receipt	9/10/2013	770 238 Park Avenue

Description	Amount
Demolition and Debris Removal at 238 Park Avenue in Bensenville, Illinois	13,500.00
Abate asbestos as identified from survey.	3,800.00
Additional monthly rentals 12 months at \$300 per month	3,600.00
Discount monthly rental of fence 12 months at \$150	-1,800.00
All work is complete!	
	<b>Total</b> \$19,100.00
	<b>Payments/Credits</b> \$0.00

<b>Balance Due</b>	\$19,100.00
<b>Job Total Balance</b>	\$19,100.00



**VILLAGE OF BENSENVILLE  
INSPECTIONAL SERVICES**

12 South Center  
Bensenville, IL 60106  
630-350-3413 fax:630-350-3449

Type of Inspection: CORRECTION NOTICE

**CORRECTION NOTICE**

Address: 238 PARK

Unit:

Business name::

Phone: 630-673-6188

Property Owner: Dave Bipin

Address: po box 105 Addison IL.60101

Inspection Date: 11/20/2019

Inspector: LOUIS CZERWIN

Checklist # Violation  
010Z OTHER

Violation comment

Failure to comply with conditions of permit, must remove electrical wires and piping along with plumbing pipes underground. All concrete and or block shall be removed for the backfill inspection. Construction fence was removed before clean up of the debris was completed. Fence needs to be re-installed until the site is clean and free of hazards.

**Additional Remarks/Comments:** Fence needs to be re-installed or the site needs to be prepped and approved for backfill

Reinspection 72903 created on 11/20/2019 by 6523lcze

**THOSE ITEMS LISTED ABOVE ARE VIOLATIONS OF BENSENVILLE'S ADOPTED VILLAGE CODE AND/OR PROPERTY MAINTENANCE CODE. THIS IS YOUR WRITTEN "CORRECTION NOTICE". FAILURE TO CORRECT THE ABOVE LISTED VIOLATIONS WITHIN THE PRESCRIBED TIME CAN RESULT IN A FINE OF UP TO \$750 PER VIOLATION, PER DAY.**

You are hereby notified to remedy the conditions as stated above within 14 days.

Neither this inspection nor any Certificate of Occupancy issued by the Village of Bensenville shall be considered a complete list of Code or Municipal Ordinances. Our inspection can be substantially limited by access available and stored items or furniture. Some occupancies may require inspections to be completed on individual systems such as heating appliances, roofing, structure or fire protection systems. If you have questions about this inspection, please call 630-350-3414.

**DISCLAIMER: The Village of Bensenville does not warrant the condition of any property inspected and disclaims all liability for any claims arising out of the property or condition thereof.**

sent via usps

Copy of this report received by/mailed to:

Louie Czerwin

11/20/19

Inspector:

Date:



**VILLAGE OF BENSENVILLE**  
**INSPECTIONAL SERVICES**

12 South Center  
 Bensenville, IL 60106  
 630-350-3413 fax:630-350-3449

Type of Inspection: CORRECTION NOTICE

**CORRECTION NOTICE**

Address: 238 S Park St.

Unit:

Business name::

Phone:

Property Owner: Dave Bipin

Address: P O BOX 105 ADDISON IL 60101

Inspection Date: 6/29/2020

Inspector: LOUIS CZERWIN

Checklist #	<u>Violation</u>
005	VILLAGE REGULATIONS

Violation comment

Failure to complete permit # 9592

Please apply for an extension on your permit and complete required work within 30 days.

**Additional Remarks/Comments:**

Reinspection 76469 created on 06/29/2020 by 6523lcze

**THOSE ITEMS LISTED ABOVE ARE VIOLATIONS OF BENSENVILLE'S ADOPTED VILLAGE CODE AND/OR PROPERTY MAINTENANCE CODE. THIS IS YOUR WRITTEN "CORRECTION NOTICE". FAILURE TO CORRECT THE ABOVE LISTED VIOLATIONS WITHIN THE PRESCRIBED TIME CAN RESULT IN A FINE OF UP TO \$750 PER VIOLATION, PER DAY.**

You are hereby notified to remedy the conditions as stated above within 30 days.

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sent via usps

Copy of this report received by/mailed to: \_\_\_\_\_

Louie Czerwin

6/29/2020

Inspector: \_\_\_\_\_

Date: \_\_\_\_\_



## BENSENVILLE

## INVOICE

Village of Bensenville  
12 S Center Street  
Bensenville, IL 60106

DATE 6/3/2020  
CUSTOMER ID 40585

BILL TO      Dave Bipin  
                  P.O. Box 105  
                  Addison, IL 60101

**PAYMENT TERMS**

Make all checks payable to Village of Bensenville. Thank you for your business!

Mailing Address : Village of Bensenville - 12 S Center Street, Bensenville, IL 60106



## BENSONVILLE

## INVOICE

Village of Bensenville  
12 S Center Street  
Bensenville, IL 60106

DATE	7/1/2020
CUSTOMER ID	40585
INVOICE NO.	201672

BILL TO      Dave Bipin  
                  PO Box 105  
                  Addison, IL 60101

**PAYMENT TERMS**

Make all checks payable to Village of Bensenville. Thank you for your business!

Mailing Address : Village of Bensenville - 12 S Center Street, Bensenville, IL 60106