

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, LAW DIVISION

JAMES C. JAEGER and  
J.C.J. DEVELOPMENT, INC.,

Plaintiffs,

vs.

THOMAS OKON and JOY OKON,

Defendants.

Case No. 2007 L 004940

Honorable Ronald S. Davis

2008 MAR 27 PM 3:33  
JUDITH BROWN  
CLERK OF CIRCUIT COURT  
LAW DIVISION

FILED-4

NOTICE OF MOTION

TO: Patrick G. Donnelly  
Alexander McH. Memmen  
Riordan, Donnelly, Lipinski & McKee, Ltd.  
10 N. Dearborn Street, 4<sup>th</sup> Floor  
Chicago, IL 60602

PLEASE TAKE NOTICE that on 4/3, 2008 at 9:30 a.m., the  
undersigned will appear before the Honorable Judge Ronald Davis or any judge sitting in  
his stead, in Room 2206 of the Circuit Court of Cook County, Illinois, Law Division and  
present the attached Defendants' **MOTION TO DISMISS PLAINTIFFS' FIRST  
AMENDED COMPLAINT PURSUANT TO 735 ILCS 110 §15.**

THOMAS and JOY OKON

By: 

Their Attorney

Daliah Saper  
Saper Law Offices, LLC  
203 N. Wabash, Suite 2010  
Chicago, IL 60601  
312.641.1551  
312.641.1611 (facsimile)  
[dsaper@saperlaw.com](mailto:dsaper@saperlaw.com)  
Cook County Atty No. 4148

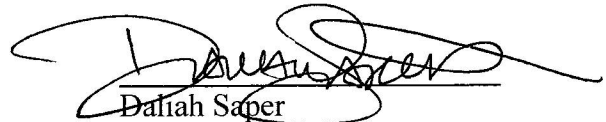
**CERTIFICATE OF SERVICE**

I, Daliah Saper, an attorney, under penalties as provided by law pursuant to Section 1-109 of the Illinois Code of Civil Procedure, certify that I served a true and correct copy of:

MOTION TO DISMISS PLAINTIFFS' FIRST AMENDED COMPLAINT  
PURSUANT TO 735 ILCS 110 §15

Upon: Patrick G. Donnelly  
Alexander McH. Memmen  
Riordan, Donnelly, Lipinski & McKee, Ltd.  
10 N. Dearborn, 4<sup>th</sup> Floor  
Chicago, IL 60602  
*Attorney for Plaintiffs*

By: Electronic Mail.  
Date: 03/27/2008



Daliah Saper  
Saper Law Offices, LLC  
203 N. Wabash, Suite 2010  
312.641.1551  
312.641.1611 (facsimile)  
dsaper@saperlaw.com  
ARDC No. 6283932  
Cook County Atty No. 41484

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JAMES C. JAEGER and  
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Plaintiffs,

v.

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DEFENDANTS' MOTION  
TO DISMISS PLAINTIFFS'  
FIRST AMENDED COMPLAINT  
PURSUANT TO 735 ILCS 110/15

Case No. 2007-L-004940

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**DEFENDANTS' MOTION TO DISMISS PLAINTIFFS' FIRST AMENDED  
COMPLAINT PURSUANT TO 735 ILCS 110/15**

NOW COME Defendants, Tom and Joy Okon, through their attorneys at Saper Law Offices, LLC, pursuant to Act 110, § 15 of the Illinois Code of Civil Procedure, titled the Citizen Participation Act ("CPA"), and move this Court to dismiss, *with prejudice*, Plaintiffs' Amended Complaint for defamation and civil conspiracy to injure business ("Amended Complaint"). The Citizen Participation Act provides Defendants statutory immunity from Plaintiffs' allegations because Defendants' communications relate directly to matters of governmental and public concern. The Act mandates that all discovery should be suspended pending a decision on this motion, and that the movants are entitled to attorney's fees and costs if they prevail. Accordingly, Defendants also move to suspend discovery and recoup their reasonable attorney's fees and costs. In support of this motion, Defendants state as follows:

**WHAT IS THE CITIZEN PARTICIPATION ACT?**

The Citizen Participation Act ("CPA" or "Act") is a new statute, effective August 28, 2007. It was enacted by the Illinois legislature to provide immunity from malicious lawsuits filed against individuals for exercising their rights to "petition, speech, and association." 735 ILL.

COMP. STAT. 110/5 (2007). Introduced by Senator John J. Cullerton, the CPA mirrors other States' anti-SLAPP statutes, an acronym for "Strategic Lawsuits Against Public Participation."

*Id.* The Illinois legislature explicitly set out the public policy engendered by the CPA:

[I]t is declared to be the public policy of the State of Illinois that the constitutional rights of citizens and organizations to be involved and participate freely in the process of government must be encouraged and safeguarded with great diligence . . . Civil actions for money damages have been filed against citizens and organizations of this State as a result of their valid exercise of their constitutional rights to...speak freely...and otherwise participate in and communicate with government. There has been a disturbing increase in lawsuits termed "Strategic Lawsuits Against Public Participation".... The threat of SLAPPs significantly chills and diminishes citizen participation in government, voluntary public service, and the exercise of these important constitutional rights. It is in the public interest and it is the purpose of this Act to ...protect and encourage public participation in government to the maximum extent permitted by law; to establish an efficient process for identification and adjudication of SLAPPs; and to provide for attorney's fees and costs to prevailing movants. *Id.*

Any motion brought pursuant to the Illinois Citizen Participation act must be ruled upon within 90 days of filing. 735 ILCS110/20(a). Moreover, an appellate court must expedite any appeal from a trial court order denying, or failing to rule upon, that motion within 90 days of the trial court's order. *Id.* A moving party prevailing in a motion brought pursuant to this act *shall* be awarded his or her attorneys fees and costs incurred in connection with the motion.735 ILCS 110/25. All discovery should be stayed pending a ruling on the motion. 735 ILCS110/20 (b).

This case presents the first opportunity for an Illinois court to interpret and apply the CPA. Fortunately, the CPA's legislative history (and the legislative history behind other jurisdictions' anti-SLAPP statutes) provides this Court considerable guidance to dismiss this suit without hesitation. According to Senator Cullerton, the Citizen Participation Act is intended to provide protection to community residents in situations where, for example, they are being sued by a "landowner" for statements the community residents make in connection with opposing "a zoning change." 2007 Legis. Bill Hist., IL S.B. 1434, Senate Presentation, April 20, 2007.



In this case, Plaintiffs are land owners and real estate developers. Plaintiffs are suing Defendants for statements they made in connection with and on behalf of the North Center Neighbors, an organization actively opposed to Plaintiffs' development project and request for a zoning variance. As explained in this memorandum, Defendants' actions fit squarely within the protection of the CPA. Accordingly, this case should be dismissed, with prejudice, and Defendants' costs and fees should be awarded

### **PROCEDURAL HISTORY**

On May 10, 2007, Tom Okon posted his opinions about Plaintiffs' proposed development Project on the North Center Neighbors' blog. *See* Pls. Am. Compl. Ex. A. The post, entitled "North Center Chamber sides with JCJ Development," used editorial speculation to express Tom's general frustration with Plaintiffs' development. On May 11, 2007, the day after Tom's blog posting, Plaintiffs filed this lawsuit against him, alleging two counts of defamation. On October 5, 2007, this court denied Tom Okon's 2-615(a) motion to dismiss. The parties have since exchanged written discovery and taken the depositions of Tom Okon and Jim Jaeger. On February 27, 2008, Plaintiffs amended their complaint to add Tom Okon's wife, Joy, as a defendant. The amended complaint asserts defamation counts against both Tom and Joy in addition to a new count: "civil conspiracy to injure business." Joy Okon has not been served with the amended complaint, but for the sake of judicial efficiency, this motion is filed on behalf of both defendants.

### **SECTION 735 ILCS 110/15: BURDENS AND STANDARDS OF REVIEW**

Illinois' anti-SLAPP statute, the Citizen Participation Act, allows a movant to swiftly dispose of a claim in a judicial proceeding "on the grounds that the claim is based on, relates to, or is in response to any act or acts of the moving party in furtherance of the moving party's rights

of petition, speech, association, or to otherwise participate in government.” 735 ILCS 110/15.

“Acts in furtherance of the constitutional rights to petition, speech, association, and participation in government are immune from liability, regardless of intent or purpose, except when not genuinely aimed at procuring favorable government action, result, or outcome” *Id.* Defendants’ need only to demonstrate that the acts at issue, a blog posting and emails distributed to co-members of an activist group, were intended to procure favorable government action. Whether the actions could be the basis for defamation or civil conspiracy to injure business is irrelevant for purposes of immunity under this act. *Id.*

Upon the filing of a motion to dismiss under the Act, the burden rests on Plaintiffs to “produce clear and convincing evidence” that the acts of the Defendants “are not immunized from, or are not in furtherance of acts immunized from, liability by this Act.” 735 ILCS 110/20(c). The Act “shall be construed liberally to effectuate its purposes and intent fully.” 735 ILCS 110/30(b).

As demonstrated in this pleading, Plaintiffs cannot produce clear and convincing evidence that Defendants’ blog posting and emails served a purpose other than procuring favorable governmental action in the form of a vote against Plaintiffs’ development project. Accordingly, this case should be dismissed, with prejudice, and Defendants’ costs and fees should be awarded.

### **FACTUAL BACKGROUND**

The following facts, referencing the Parties’ deposition testimony, demonstrate that Defendants’ statements, emails, and other actions at issue in this case constitute protected activity under the CPA. Any references to Plaintiff, Jim Jaeger, are intended to include JCJ Development, Jaeger’s single member LLC.

## **I. Plaintiffs Seek To Develop A Multi-Story Building In Defendants' Community**

As early as June 2004, Plaintiff James C. Jaeger, via his single member limited liability company, JCJ Development, set out to build a 30 million dollar, 7-story building located at 1820-1842 West Irving Park Road. Jaeger Dep. 8:20-21, 21:15 February 14, 2008. The proposed development falls within Chicago Alderman Eugene Schuler's ward. The process of gaining zoning approval for a building in any ward is often complicated, requiring a careful analysis of the building's intended scope and purpose in comparison to the location's pre-existing zoning allowances. If a zoning variance is sought by a developer, community approval is often essential to its passing.

To engage community residents affected by proposed zoning variances, Alderman Schuler typically holds public meetings where residents can listen to the developer and his agents describe the proposed property. Plaintiffs first proposed their conceptual development project to 350 members of the North Center community on April 10, 2007. Many residents rejected Plaintiffs' plan, citing concerns over parking and increased traffic in the neighborhood, among other issues. *Id.* at 31:8-23, 107:11-13. Without putting the issue to a vote, the Alderman instructed Plaintiffs to conduct further research regarding the impact of the proposed development on the community and to present new project plans at a later meeting. *Id.* at 109:5-11, 110:17-22.

## **II. Defendants Organize an Activist Group to Oppose Plaintiffs' Development**

Defendants Tom and Joy Okon were among the 350 North Center residents who attended the April 10, 2007 presentation. Like other residents, the Okons were fearful of the project's potential impact on their community. After the meeting, the Okons exchanged email addresses with other like-minded attendees and made plans to meet and discuss ways to challenge any

zoning variance. To effectively facilitate the flow of ideas and track residents' concerns, Tom Okon created the NorthCenterNeighbors@gmail.com email account. Okon Dep. 23:24-24:4, 22:22-23:5, 23:10-16, 24:5-11, 25:1-3 February 14, 2008. Even after the group began to hold face-to-face meetings, email continued to be an essential mode of communication between group members. *Id.* at 25:19-24.

The first official North Center Neighbors meeting was held at a local restaurant and approximately twenty people attended. At this meeting, members discussed their concerns regarding parking issues and the increased traffic flow that would be created by Jaeger's proposed development. *Id.* at 26:24-27:2, 27:16-28:15. After that first meeting, the group met another six times at a local bar and continued to send emails to coordinate their activities. As word made its way around the community, the group's membership swelled to include 178 concerned residents, all of whom received emails from the North Center Neighbors' email account to coordinate their resistance to the proposal. *Id.* at 148:12-23. In addition to core members of the group meeting and the emails sent to all 178 members, the North Center Neighbors also engaged in traditional political activism. Members of the group met with the local Chamber of Commerce and Alderman Schuler to express their concerns; they canvassed the neighborhood for additional support, drafted petitions, collected signatures from area residents, met with Jaeger and his consultants, and posted fliers throughout the community. *Id.* at 37:15-22, 38:20-23, 52:3-17, 59:24-60:7, 70:10-17, 70:18-21, 76:16-77:6, 86:22-24, 91:3-23, 92:6-17, and 195. While performing all of these activities, the members were focused on the detrimental impact they believed Jaeger's proposed development would have on their neighborhood's character and overall safety. *Id.*

### **III. Jaeger Launches Public Relations Campaign To Coax Neighborhood Approval**

Despite his previous real estate development experience within Alderman Schuler's ward, Plaintiff Jim Jaeger had never encountered much serious community opposition. Jaeger Dep. 19:13. Nonetheless, it became increasingly clear that in order for this development to move forward, Jaeger would need the community's support. *Id.* at 108:11-12.

After the April 10, 2007, meeting, Jaeger initiated a public relations campaign, mailing letters to residents and holding eighteen private meetings at his office to explain his project plans. *Id.* at 29:11-16, 31:5-7, 31:13-32:10. He continued to meet with Alderman Schuler and also approached area residents on the street to discuss the project. *Id.* at 33:6-20, 52:13-20. Jaeger also joined the North Center Chamber of Commerce. Significantly, despite owning businesses and operating as a real estate developer in this community for 20 years, Jaeger had neither joined nor previously been active in the local Chamber of Commerce. *Id.* at 42:14-17, 63:3-13. Along with the standard membership dues, Jaeger also gave the Chamber \$3,500.00 to purchase street banners. *Id.* at 43:15-44:8.

### **IV. Tom Okon Creates The North Center Neighbors Blog to Facilitate Community Activism.**

Despite Plaintiffs' efforts, the concerns of the North Center Neighbors group persisted. In late April 2007, Tom Okon created a blog for the North Center Neighbors as a tool to facilitate the group's activism. The blog was intended to supplement the mass emails used to communicate information between the 178 members of the North Center Neighbors group. Okon Dep. 128, 133. Initially, Tom was the only person who posted on the blog, but over time, Joy Okon also began to post items. *Id.* at 134:4-13. Eventually, Joy began managing the North Center Neighbors' blog and email account. *Id.* at 141:3-15, 147:13-17.

**V. Tom Okon Blogs about Jaeger's \$3,500 "Donation" to the Chamber; Jaeger Sues.**

On May 8, 2007, Tom Okon met with members of the North Center Chamber of Commerce to express concerns held by the North Center Neighbors group. Tom left the meeting frustrated because he felt the Chamber did not adequately listen to him. *Id.* at 213:12-15, 213:16-20. Soon after, a Chamber of Commerce member informed Tom that Jim Jaeger had made a \$3,500 donation to the Chamber. *Id.* at 215:14-22.

Tom did not know exactly why Jaeger had made this \$3,500 donation, but with the struggle looming over the proposed zoning variance Tom reasonably speculated that the donation might be political. *Id.* at 217:6-19. On May 10, 2007, Tom posted on the North Center Neighbors blog his opinions of the recent Chamber of Commerce meeting and Jaeger's donation. Pls.' Am. Compl. ¶¶2-3. Within mere hours of this posting, Tom received a hand delivered letter from Jim Jaeger's attorneys threatening legal action if the posting was not removed. Tom immediately posted a retraction to the blog and by the next day, he had deleted the original posting in its entirety. Jaeger Dep. 60:1-18. Meanwhile, Jim Jaeger forged forward with his defamation lawsuit. This complaint was filed less than twenty-four hours after the posting was uploaded. Plaintiffs have subsequently amended their complaint to include Tom's wife, Joy Okon, alleging emails she sent to fellow members of the North Center Neighbors also constitute defamation. *Id.* at 5-13. A third count claims that Tom and Joy "engaged in civil conspiracy to injure business." *Id.* at 14.

**ARGUMENT**

The Illinois Citizen Participation Act "applies to any motion to dispose of a claim in a judicial proceeding on the grounds that the claim is based on, relates to, or is in response to any act or acts of the moving party in furtherance of the moving party's rights of petition, speech,

association, or to otherwise participate in government. Acts in furtherance of the constitutional rights to petition, speech, association, and participation in government are immune from liability, regardless of intent or purpose, except when not genuinely aimed at procuring favorable government action, result, or outcome.” 735 ILCS 110/15. The Act “shall be construed liberally to effectuate its purposes and intent fully.” 735 ILCS 110/30(b).

As a threshold matter, there is no dispute that Plaintiffs’ requested zoning variance is a governmental matter of public concern. Zoning issues are presented to a city zoning board, involve an elected Alderman, and require input from community residents. Moreover, the Illinois legislature expressly contemplated “petitioning against a zoning change” as an example of governmental participation protected by and falling under the purview of the Act. 2007 Legis. Bill Hist., IL S.B. 1434, Senate Presentation, April 20, 2007.

Thus, to succeed on their CPA motion to dismiss, Tom and Joy need only demonstrate that their blog postings and emails were genuinely aimed at procuring favorable government action---a vote against Plaintiffs’ request for a zoning variance. Even if Tom and Joy’s statements are arguably defamatory or injure Plaintiffs’ business, (claims Tom and Joy vigorously deny), the Okons are still entitled to broad statutory immunity for their actions. The Act explicitly disregards the Okons’ intent or purpose so long as their overarching motivation was to actively engage in a matter of public concern.

**I. Tom Okon’s Blog Posting was genuinely aimed at procuring favorable governmental action; Plaintiffs cannot provide clear and convincing evidence otherwise.**

Plaintiffs’ initial complaint against Tom Okon was premised on postings Tom made on the North Center Neighbors Blog. The North Center Neighbors blog serves as a vehicle for members of the NCN group to freely associate with one another, share opinions, and to disseminate

information regarding Plaintiffs' request for a zoning change. It is, by its own description, a method of political advocacy intended to achieve a community referendum against Plaintiffs' request for a zoning variance.

Framing each entry on the Blog is a header with the North Center Neighbors mission statement appraising visitors of the group's agenda:

**The History of the North Center Neighbors**

We were founded in April of 2007 to oppose the proposed zoning change that would allow construction of a mammoth 7-story building at 1822-40 W. Irving Park Road. A small group decided that there was an urgent need for us to band together and help the North Center community speak as one voice. In 1 week's time, hundreds of petitions were signed and the group has grown to over 200 people. And we are still growing. A short time later we were alerted that another group of residents was also coming together as North Center Neighbors. They too were fighting against overdevelopment on their blocks. So we decided to band together to form a stronger group. With this merger we now have a very large group of residents willing to do what it takes to preserve the character of North Center.

To the side of every entry is a column with additional text:

**Our Most Urgent Cause:**

While we support the continued development and beautification of the 1800 block of W. Irving Park Road, the mammoth 7-story building at 1822-40 W. Irving Park Road being proposed by JCJ development is much too large for, and is completely out of scale with our neighborhood. Adding 88 condominium units and a garage for more than 180 cars in such a confined area would detrimentally impact us in many ways. We strongly believe that the proposed building and zoning change are wholly inappropriate for the location, and are **ABSOLUTELY AGAINST ANY ZONING CHANGES** in that area....We need your support.....you have a direct vote and can help determine the fate of this proposed development.

Tom's May 10<sup>th</sup> posting expressed frustration with the North Center Chamber of Commerce and Plaintiffs, Jim Jaeger and JCJ Development. Among other things, Tom called Jaeger "greedy" and speculated on his motivations for making a \$3,500 donation to the Chamber of Commerce. All of the comments in Tom's blog posting relate directly to the fight over Plaintiffs' real-estate development and variance request. Tom's statements are clearly intended



to influence ongoing public debate especially when read in the context of the blog's mission statement and corresponding call to action.

Plaintiffs agree. In their amended complaint they acknowledge that Tom created the blog and made the statements at issue: "*in furtherance of his stated objective to oppose the proposed zoning change....*" Pls' Compl. ¶8. Accordingly, because Tom's statements are genuinely aimed at procuring favorable government action and by Plaintiffs own admission, this speech clearly falls under the Citizen Participation Act, this case should be dismissed and Tom's attorneys' fees and costs should be paid by Plaintiffs.

**II. Joy Okon's email exchanges were genuinely aimed at procuring favorable governmental action; Plaintiffs cannot provide clear and convincing evidence otherwise.**

In their amended complaint, Plaintiffs contend that Joy Okon's blog posting and a series of emails she sent to members of the North Center Neighbors group constitute "defamation" as well a "civil conspiracy to injure business." Again, Plaintiffs acknowledge that Joy's statements were made "*In furtherance of her stated objective to oppose the proposed zoning change.*" Pls.' Am. Compl. ¶23,31. Because Plaintiffs agree that Joy's actions were motivated by her opposition to Plaintiffs' development, it is unnecessary to argue the CPA's applicability.

Even without Plaintiffs' acknowledgment, the contents of Joy's email communication, on their face, demonstrate activism against Plaintiffs' development. The emails predominately concern dates for public meetings held by the Alderman, the North Center Chamber of Commerce's role in the voting process, as well as speculation on Plaintiffs' activities to secure his desired zoning variance. Because Joy's statements are genuinely aimed at procuring favorable government action and because Plaintiffs agree that the Joy's statements were made with this motivation in mind, Joy's statements clearly fall under the CPA. Accordingly, Joy's

actions are immune from Plaintiff's claims. This case should be dismissed and Joy's attorneys' fees and costs should be paid by Plaintiffs.

### **III. Plaintiff's Lawsuit is the Prototypical Scenario Contemplated by Anti-SLAPP Statutes and should be dismissed under the Citizen Participation Act**

Strategic Lawsuits Against Public Participation, are often brought by real estate developers against individuals and community groups who oppose them on issues of public concern. FirstAmendmentProject.org, Guarding Against the Chill: A Survival Guide for Slapp Victims, <http://www.thefirstamendment.org/antislappresourcecenter.html> (last visited March 27, 2008). SLAPP filers frequently use lawsuits based on ordinary civil claims such as defamation, conspiracy, malicious prosecution, nuisance, interference with contract and/or economic advantage, as a means of transforming public debate into lawsuits. *Id.*

By his own admission, Plaintiffs lawsuit against the Okon's is a prototypical SLAPP suit. The following is a passage from Defendant Jaeger's Deposition.

Q. Was the website only up for one---that posting was only up for one night, right?

A: Probably.

Q: You're asserting that the statements posted on that blog caused you damages, is that right?

A: Not just those statements on the blog.

Q: What else caused you damages?

A: **Words, actions, everything.** (Jaeger Dep. 62:15-63:1)

Jaeger fully intended to bring this suit in order to punish the Okons for their activism. The fact that Jaeger retained attorneys and filed a lawsuit less than 24 hours after Tom posted the allegedly offensive blog entry, serves to demonstrate that his lawsuit was part of a greater, pre-mediated plan to intimidate and stifle any dissenters from exercising their right to protest his development project. In short, Plaintiffs actions constitute the prototypical scenario contemplated by the CPA.

Although there is no Illinois CPA case law to serve as precedent for this case, this Court may rely on a number of factually similar cases in other jurisdictions to, without hesitation, dismiss Plaintiffs' complaint with prejudice and award Defendants their attorneys' fees and costs.

In *Melius v. Keiffer*, plaintiffs planned the construction of a new neighborhood bar. Defendants, a neighborhood residential group, opposed its construction. *Melius v. Keiffer*, No. 2007-CA-0189, 2008 La. App. LEXIS 358, at \*2 (La. Ct. App. Mar. 12, 2008). The defendants spoke out about the proposed construction via the residential group's website, at city council meetings, in letters to officials, and in an appeal to the Board of Zoning Adjustments. *Id.* at \*1-2. The plaintiffs filed a defamation suit based on defendants' statements that plaintiff "had received special treatment from the City . . . had made a 'backroom deal' with City officials" and "had broken various promises." *Id.* at \*6-7. The Appellate Court affirmed the trial court's grant of the defendant's motion to dismiss pursuant to Louisiana's anti-SLAPP statute, finding that all of these statements "fall under the purview of protected free speech . . . regarding a public issue." *Id.* at \*7.

In *Marchant Investment & Management Co. v. St. Anthony West Neighborhood Organization, Inc.*, a neighborhood organization opposed a real estate developer's zoning application and requests for variances by writing a disgruntled letter to the city planning department. *Marchant Inv. & Mgmt. Co. v. St. Anthony W. Neighborhood Org.*, 694 N.W.2d 92 (Minn. Ct. App. 2005). The letter openly opposed the plaintiff's zoning application and requests for variance, stating in part, "We have met countless times with the developers to inform them of . . . our concerns . . . [t]hey have refused to listen to our concerns, especially regarding the height variance [and] design" of the plan. *Id.* at 94. Subsequently, Plaintiff filed a lawsuit against the

organization for defamation and interference with prospective business advantage. *Id.* The court dismissed the lawsuit under Minnesota's anti-SLAPP statute, and noted that in a hotly contested public debate, "an audience expects opposing sides to use persuasive force to convince others to adopt their position and is less likely to perceive statements as objective assertions of truth." *Marchant Inv.*, 694 N.W.2d at 96-97.

In *Lobiondo v. Schwartz*, the plaintiffs were real estate owners who filed suit against the defendants for defamation and interference with business advantage. *Lobiondo v. Schwartz*, 733 A.2d 516 (N.J. 1999). The plaintiffs had enlarged their property, both with and without governmental approval, and the defendants objected to the plaintiffs' action by distributing flyers, talking to neighbors, attending planning board meetings, and writing letters to officials. *Id.* at 518. The Supreme Court of New Jersey dismissed the plaintiffs' lawsuit, noting that a "rhetorical-hyperbole statement of opinion is characteristic of opposition to local land use issues because the public is invited to express its views." *Id.* at 527.

Finally, in *Fromm v. Boston Redevelopment Authority*, the Superior Court of Massachusetts granted a defendant's motion to dismiss pursuant to an anti-SLAPP statute, because the defendant demonstrated that the plaintiffs' claims were based on the following petitioning activities: petitioning for opposition to a development project by forming a coalition, voicing personal opposition to a development project, and writing letters to various newspapers, individuals and agencies. *Fromm v. Boston Redevelopment Authority*, No. 032951F, 2005 Mass. Super. LEXIS 318, at \*1 (Mass. Super. May 13, 2005). In granting the dismissal, the court reasoned that the defendant's activities are governed "by the letter and purpose" of the applicable anti-SLAPP statute. *Id.* at \*6. The defendant's activities, including meeting with local officials

to reconsider the development project and writing letters, constituted "exactly the type of activity that the anti-SLAPP statute seeks to protect." *Id.*

### **CONCLUSION**

Plaintiffs lawsuit is incontrovertibly "based on, relates to, or is in response to" the Okons' community activism. 735 ILCS 110/15. The blog posting and emails at issue were genuinely aimed at producing a favorable decision from the alderman's office with respect to the zoning variance request. Therefore, the blog posting and the emails are immune from liability under the CPA, and the Plaintiffs' suit must be dismissed *with prejudice*.

WHEREFORE, Defendants respectfully request this Court to:

- 1) Suspend discovery for 90 days pending a ruling on this motion;
- 2) Dismiss Plaintiffs' Amended Complaint with prejudice;
- 3) Award Defendants their costs and attorneys fees in connection with this motion; and
- 4) Grant any additional relief this Court deems appropriate and just under the circumstances.

Dated: March 27, 2008

Respectfully submitted,  
THOMAS and JOY OKON

By: \_\_\_\_\_

Their Attorney  
Daliah Saper  
Saper Law Offices, LLC  
203 N. Wabash  
Suite 2010  
312.641.1551  
312.641.1611 (facsimile)  
[dsaper@saperlaw.com](mailto:dsaper@saperlaw.com)  
Atty No. 41484