

April 16, 2013
Page Two

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ATTORNEYS AT LAW

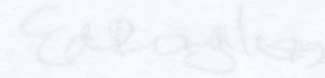
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Sincerely,



Edgar Roy III

Email: eroy@kdbqlaw.com

ER/ljd
Enclosure

cc Brad Putney (via hand delivery)
Ken Bonney (via hand delivery)

April 16, 2013

Hand Delivered

Marcia Stobie
Planning Commission Chairperson
Village of Elberta
151 Pearson Street
Elberta, MI 49628

Re: Transcript Excerpt of 1/4/13 Hearing

Dear Chairperson Stobie and Planning Commission Members:

You may recall that Judge Batzer found in favor of the Village on both cases Loy Putney previously filed against the Village. As part of the Court's deliberations on the cases, the Trial Courts shared certain observations/comments relative to the fact the Ordinance did not contain any reference to whether "apartments" are permitted within the Village as a matter of right or only as a special use.

In order to assist you in your consideration of the pending Applications, I am attaching the Court transcript. I have bracketed some of the Judge's comments for your ease of reference.

April 16, 2013
Page Two

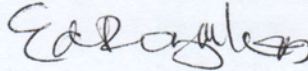
STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF BENZIE

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Please let me know either in advance or as part of the public hearing process if you have questions concerning this topic. Thank you.

vs.

Sincerely,

File No. 12-9460-AA



Edgar Roy III

VILLAGE OF ELBERTA,

Appellee.

COPY

ER/ljd

Enclosure

cc Brad Putney (via hand delivery)
Ken Bonney (via hand delivery)

LOU F. PUTNEY,

Plaintiff,

vs.

File No. 12-9378-A5

VILLAGE OF ELBERTA, CARL HOFFSINGER,
SHARYN BOWER, REGINALD J. MANVILLE
and KENNETH HOLMES, both individually
and jointly and severally,

Defendants.

ORAL ARGUMENTS; WRIT OF HABEAS

BEFORE THE HONORABLE JAMES H. BATZER, CIRCUIT JUDGE

Beulah, Michigan - Friday, January 4, 2013

APPEARANCES:

FOR THE APPELLANT/PLAINTIFF:

BRADLEY L. PUTNEY (P50980)
Putney Law
810 Business Park Dr.
Traverse City, MI 49686
231-922-9688

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FOR THE APPELLANT: STATE OF MICHIGAN (P36809)
IN THE CIRCUIT COURT FOR THE COUNTY OF BENZIE
FOR THE DEFENDANT: GRETCHEN L. OLSEN (P36619)
Plum
303 Howard St.
Petoskey, MI 49770
231-347-1200

LOY F. PUTNEY,
Appellant,
vs.
VILLAGE OF ELBERTA,
Appellee.

PO Box 987
Traverse City, MI 49685
231-947-7900

File No. 12-9460-AA

COPY

And
LOY F. PUTNEY,
Plaintiff,
vs.
VILLAGE OF ELBERTA, CARL NOFFSINGER,
SHARYN BOWER, REGINALD J. MANVILLE
and KENNETH HOLMES, both individually
and jointly and severally,
Defendants.

File No. 12-9378-AS

ORAL ARGUMENTS; WRIT OF MANDAMUS

BEFORE THE HONORABLE JAMES M. BATZER, CIRCUIT JUDGE

EXHIBITS:
Beulah, Michigan - Friday, January 4, 2013
None

APPEARANCES:

FOR THE APPELLANT/PLAINTIFF:

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FOR THE APPELLEE: EDGAR ROY III (P36809)
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FOR THE DEFENDANT: GRETCHEN L. OLSEN (P36619)
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REPORTED BY: CHRISTINE M. LYSTER, CSR-0207
Official Court Reporter

TABLE OF CONTENTS

WITNESSES: None

EXHIBITS: None

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submitted to the planning commission Beulah, Michigan
members were on these various cases Friday, January 4, 2012

THE CLERK: Putney versus Elberta, 12-9378-AS and
12-9460-AA.

MR. PUTNEY: Your Honor, may it please the Court,
Bradley Putney for the plaintiff/appellant, Loy Putney.
This is the date and time for appellant's appeal from the
Zoning Board of Appeals hearing and also on writ of
mandamus/superintending control.

Your Honor, in way of background before we get
into a little history here, the village council served as
the ZBA in March of 2012. At one of the council meetings
prior to the ZBA I addressed the board of why a permit was
not granted, and a council member of the board indicated
that they weren't going to allow a rhubarb to open a trash
house. From that point I then brought a motion for
mandamus/superintending control and multiple hearings
followed.

THE COURT: Why are you addressing the council?
What do they have to do with anything?

MR. PUTNEY: At that point, Your Honor, there had
been several applications, use permit and special use
permit, that had been submitted, and they had been submitted
to not only the zoning board -- they had been submitted not
only to the zoning administrator, but they had been

1 submitted to the planning commission in that these same
2 members were on these various committees.

3 THE COURT: What had you submitted to the planning
4 commission and why?

5 MR. PUTNEY: What and why?

6 THE COURT: Yeah.

7 MR. PUTNEY: Well, for one thing, under the
8 February 7th, 2012 letter, there was an application for a
9 special use permit submitted.

10 THE COURT: Okay.

11 MR. PUTNEY: There was also listed under the
12 provisions of the ordinance that were provided to us
13 specific terminology, which was state license facility,
14 other transient housing. And throughout this application
15 process there was also a detailed --

16 THE COURT: Look, I just want to know why on earth
17 are you addressing the city council -- the village council.
18 What do they have to do with it? They don't have anything
19 to do with it.

20 MR. PUTNEY: Because the village council oversees
21 the zoning administrator.

22 THE COURT: They don't -- they don't have anything
23 to do with it. You submit it to -- you submit your
24 application to the zoning administrator. The zoning
25 administrator makes a decision. You either appeal that

1 decision or if you're submitting for a special use permit,
2 you go to the planning commission. Why on earth are you
3 before the village council? It doesn't make any sense to
4 me. It's a waste of time and energy not having anything to
5 do with which body decides what.

6 MR. PUTNEY: But at least something happened
7 because at that point nothing had happened. Phone calls
8 were made.

9 THE COURT: Well, if the person having to make a
10 decision doesn't make a decision, you've got a legal remedy.
11 I mean, to me, you're off on some kind of a diversion. It's
12 like going to the -- it's like going to the county
13 commission and saying you don't like what the congress is
14 doing.

15 MR. PUTNEY: Your Honor, I've thoroughly briefed
16 the matter and I'll rest on my brief.

17 THE COURT: No, I want to get -- get back. Are
18 you an attorney or not?

19 MR. PUTNEY: I'm an attorney, yes, sir.

20 THE COURT: Well, don't stand there and pout.

21 MR. PUTNEY: I'm not pouting.

22 THE COURT: If I have questions for you, I'll ask
23 you questions.

24 MR. PUTNEY: Okay. Very good. Have I answered
25 that question?

1 provided THE COURT: No, you haven't given me a good answer
2 as to why you're before the village council because they
3 don't have any relevant decision to make in the matter.
4 MR. PUTNEY: Okay. I'm at the village council
5 with my uncle during public comment asking questions.
6 housing THE COURT: Well, fine. You can go to every
7 village council meeting and during public comment you can
8 comment on anything under the sun, but how does it have to
9 do with anything that this Court has to decide on this the
10 appeal?ment on his application?
11 MR. PUTNEY: I was just starting out with some
12 background information before I went forward. terminology to
13 write down THE COURT: What did -- what did your client apply
14 for? THE COURT: He didn't know what an apartment is?
15 Everybody MR. PUTNEY: He applied for a use permit. sn't know
16 what labor THE COURT: What did he put on his application?
17 an every MR. PUTNEY: He put on his application labor very
18 housing. ing that I'm aware of.
19 THE COURT: Can you tell me what that is? made
20 clear at MR. PUTNEY: Labor housing, as he expressed to the
21 zoning administrator, was to take the building that he was
22 purchasing at the time that he now owns and combining one or
23 two or more rooms into a suite for single families to reside
24 in with cooking and bathroom facilities, which happens to be
25 the exact same definition that was in the ordinance that was

1 provided to us.
2 THE COURT: What did he want to -- what did he
3 want to do there? Tell me what he wanted.
4 MR. PUTNEY: He wanted --
5 THE COURT: Because I don't know what labor
6 housing is. That's not a -- what did he want?
7 MR. PUTNEY: He wanted to provide apartment
8 housing.
9 THE COURT: Okay. All right. Now, why didn't he
10 put apartment on his application?
11 MR. PUTNEY: Because despite requests for the
12 ordinance as a lay person, he didn't know the terminology to
13 write down.
14 THE COURT: He didn't know what an apartment is?
15 Everybody knows what an apartment is. Everyone doesn't know
16 what labor housing is. That's my point. An apartment has
17 an every day meaning. Labor housing doesn't have an every
18 day meaning that I'm aware of.
19 MR. PUTNEY: And the zoning administrator made
20 clear at the Zoning Board of Appeals upon questioning was it
21 his job to follow up and ask regarding what it was and
22 review provisions of the ordinance to see if anything was
23 applicable. He admitted that was his responsibility. When
24 asked by Mr. Stapleton if he would consider the application
25 if submitted today with the section 13.01 apartment that

1 specifically provided for under commercial use, or 20.08
2 meaning dwelling units, that he would not consider those
3 applications today with those words on the application for
4 use permit.
5 And Your Honor, the main point I want to make here
6 today is once he made that statement and decision, and it's
7 clear that there is a definition of dwelling units in the
8 ordinance despite what Mr. Roy said at the ZBA hearing, that
9 to then decide upon one classification of persons, look, you
10 may have a dwelling unit but you may not, that then arises
11 under the equal protection and the strict, strict scrutiny
12 argument.
13 THE COURT: You show me in the record, you show me
14 in the record where the Zoning Board of Appeals denied your
15 application on the basis of race or ethnicity.
16 MR. PUTNEY: What they did is they specifically
17 stated they were not considering race. But then when they
18 questioned Mr. Noffsinger, would you consider apartments
19 under this circumstance, he says no. Well, Your Honor,
20 under this circumstance is if you have apartments called for
21 under the ordinance, or dwelling units called for --
22 THE COURT: What do you care -- what do you care
23 if Mr. Noffsinger says he won't consider apartments?
24 Lay -- lay an application in front of him, formally do it,
25 that says apartments, and then he has to consider it,

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doesn't he?
THE COURT: Well, yes.

MR. PUTNEY: But when he says I refuse to consider it, at that point you have to make a decision. Do you do that in continued futile proceedings, or do you come to the relief of the Circuit Court? And the whole point of --

labor hous THE COURT: Well, you came for relief to the Circuit Court.
PUTNEY: They denied labor housing, that

there's any MR. PUTNEY: Exactly.
ordinance that allows his

building to THE COURT: And I am telling you this is what you can do with a decision of a Zoning Board of Appeals. You can appeal it and I decide it based on the record that you made and other people made in front of the Zoning Board of Appeals. What did the Zoning Board of Appeals decide?

that doesn't MR. PUTNEY: The Zoning Board of Appeals decided multiple things. First they decided that their first 15 day deadline in action of the ordinance does not apply to them. They missed the deadline by five days. They said number one, well, that's substantial compliance and you're not prejudiced. That was one ruling. The response to that ruling is why do we have deadlines in an ordinance if they're illusionary?
It's a preexisting building.

THE COURT: What was their ruling on the merits?

wanted to MR. PUTNEY: Well, there were several different merits I believe under the case. Are you referring to the merit of the use permit itself rather than the deadlines?

1 THE COURT: Well, yes. back to how is -- how is
2 someone do MR. PUTNEY: Okay. Well, what they decided under
3 each use permit, the first use permit, labor housing, they
4 affirmed his decision of the denial of labor housing.
5 himself an THE COURT: What does that mean? They denied
6 labor housing. COURT: Does the Zoning Board of Appeals act
7 on commun MR. PUTNEY: They denied labor housing, that
8 there's any provision in their ordinance that allows his
9 building to be used to house farm workers. e number one, a
10 formal app THE COURT: The ordinance doesn't talk about it,
11 doesn't. rator indicated it was his job to review it, ask
12 questions MR. PUTNEY: No, it doesn't. But it shows -- tion
13 of the ord THE COURT: So your -- he's applied for something
14 that doesn't exist under the ordinance. and he answered yes,
15 I did that MR. PUTNEY: on But he applied for what is under the
16 ordinance, the use of this building as divided up as
17 dwelling units. COURT: Show me in the record where the Zoning
18 Board of THE COURT: Did he have a site plan? Did he have
19 some kind of drawing? All I have, Your Honor, is what I
20 cited, wh MR. PUTNEY: He had the drawing of when he e the
21 purchased the building. It's a preexisting building. ple
22 times on THE COURT: No, did he have a drawing of what he
23 wanted to make it into? actually write down apartments, no.
24 No, he did MR. PUTNEY: Each individual room divided out?
25 No. THE COURT: What is labor housing? -- Is that where

1 THE COURT: So I get back to how is -- how is
2 someone deciding supposed to know he's applied to have
3 apartments in the building?

4 MR. PUTNEY: It was the communication between
5 himself and Mr. Noffsinger.

6 THE COURT: Does the Zoning Board of Appeals act
7 on communications between your client and the zoning
8 administrator or do they act on a formal application?

9 MR. PUTNEY: I say both. Because number one, a
10 formal application was provided. And two, the zoning
11 administrator indicated it was his job to review it, ask
12 questions, and determine if there's any applicable section
13 of the ordinance. They asked the Zoning Board of Appeals,
14 asked Mr. Noffsinger, did you do that, and he answered yes,
15 I did that. Based upon doing that, Mr. Noffsinger, would
16 you change your decision today? Answer, no.

17 THE COURT: Show me in the record where the Zoning
18 Board of Appeals denied an application for apartments.

19 MR. PUTNEY: All I have, Your Honor, is what I
20 cited, which was Page 91 through 93 of Exhibit 3 where the
21 question and answer was set forth as I've stated multiple
22 times on the record now. If there's form over substance is
23 the issue here, did you actually write down apartments, no.
24 No, we did not because we didn't have the ordinance.

25 THE COURT: What is labor housing? Is that where

1 factory workers live? Is that where -- is labor housing, if
2 there's -- if there's the state working on a highway, is
3 that where construction workers live? What is labor
4 housing? Is it where anyone who has a job lives? I don't
5 know what labor housing is. Now, you've told me --

6 MR. PUTNEY: I believe --

7 THE COURT: -- it's housing for agricultural
8 workers or farm workers.

9 MR. PUTNEY: I believe -- that is so easy, that

10 THE COURT: Or migrant workers.

11 MR. PUTNEY: I believe on one of the applications
12 something to the nature of migrant housing was listed.

13 THE COURT: What's migrant housing?

14 MR. PUTNEY: Migrant housing is where farm workers
15 that come to northern Michigan to pick fruit are provided a
16 place to live while they are there.

17 THE COURT: What distinguishes migrant housing
18 from any other housing?

19 MR. PUTNEY: In my opinion nothing. Because
20 either way it is dwelling units where people live.

21 THE COURT: Okay.

22 MR. PUTNEY: The mere fact that they are living
23 there without having to pay or to pay just a small amount I
24 think is of no never mind.

25 THE COURT: Well, that's between them and the

1 landlord if they are not owners. low through on our appeal.

2 MR. PUTNEY: Correct. I agree. I apply -- what

3 else did THE COURT: So it's housing. view? the city

4 MR. PUTNEY: It's housing for -- application for a

5 special use THE COURT: Your client wanted to convert a
6 building into housing. Okay. Now, was there any denial of a

7 special use MR. PUTNEY: For each individual family.

8 THE COURT: Okay. So did he want to make it into
9 what? Into apartments, right? Well, that is so easy, that
10 is so easy to put down on an application apartments.

11 MR. PUTNEY: And in hindsight all of us wish he
12 would have had the ordinance to review to write that down.

13 THE COURT: You don't even need an ordinance. I
14 want to build apartments. Write down on the application
15 apartments. People know what that is. Board of Zoning Appeals

16 can affirm MR. PUTNEY: Okay. Which now we're arguing in
17 circles. When we write down apartments today, and Mr. her
18 Noffsinger has made clear that he won't consider it, then --

19 THE COURT: No, no, no. See, you put that on an
20 application and Mr. Noffsinger doesn't have a choice. He
21 has to consider it. see how a zoning administrator or a

22 Zoning Board MR. PUTNEY: I understand your point. And we went
23 back and forth, Mr. Putney and I, on this, which route do we
24 go. Do we fill out another application where the zoning
25 administrator said he won't consider it or do we come to the

1 Circuit Court for relief and follow through on our appeal.

2 THE COURT: So what else did you apply -- what
3 else did the Board of Zoning Appeals review?

4 MR. PUTNEY: They reviewed an application for a
5 special use permit.

6 THE COURT: Okay. Now, was there any denial of a
7 special use permit by the zoning administrator?

8 MR. PUTNEY: No.

9 THE COURT: Okay.

10 MR. PUTNEY: He had --

11 THE COURT: Then the Zoning Board of Appeals is
12 reviewing a nothing.

13 MR. PUTNEY: They affirmed his decision.

14 THE COURT: They affirmed? Believe me, I'm going
15 to ask Mr. Roy this, how on earth a Board of Zoning Appeals
16 can affirm something that never happened.

17 MR. PUTNEY: I was dismayed. That was my other
18 main --

19 THE COURT: You know what? I read that ordinance.
20 I'll get to this with Mr. Roy. I read that ordinance. I
21 don't see -- I don't see how a zoning administrator or a
22 Zoning Board of Appeals can deny a use of apartments, a use
23 that is specifically provided for in the zoning ordinance
24 in a commercial district. You know, the only question --
25 the only question is does that provision of the zoning



1 ordinance, do they -- are you just straight out entitled to
2 build apartments. They have to give you -- they have to
3 give you a permit. Or does that section of the ordinance,
4 in order to build apartments, do you have to get a special
5 use permit, which they probably can't deny either.

6 MR. PUTNEY: Right. My position was it's a land
7 use permit because it's listed under intent of the statute
8 and it has a special section of dwelling units that is
9 nothing short then a definition of the apartments. So if
10 it's clearly the intent to provide apartments under 13.01, I
11 don't see how you could possibly claim that it's required to
12 use a special use permit when you failed to specifically
13 define one way or the other under the ordinance. So if you
14 follow through under the logical basis of the ordinance of
15 how it's set forward in the commercial district, I believe
16 it's section 13 and 13.01, specifically says intent to
17 provide for apartments, I don't know how you could possibly
18 argue that that's not a land use permit and would require a
19 special use permit when it's the intent to provide for
20 apartments.

21 I really think the only remaining issue here is
22 who inspects the building. As long as there's a proper
23 means of egress and the smoke protectors to protect these
24 families, I think it has to be allowed.

25 THE COURT: It says and apartments under

1 appropriate conditions.

2 MR. PUTNEY: Right.

3 THE COURT: So does that implicate a special use
4 permit?

5 MR. PUTNEY: I don't believe so because it's so
6 high up in the ordinance above the sections where it says
7 land use and special use, and then you flip to 20.08
8 providing dwelling units that provide the definition on Page
9 4 of the ordinance of what a dwelling unit is of a one --

10 THE COURT: Well, but they talk about single
11 family. And I don't know if they define -- are you telling
12 me they -- are you telling me they can zone out if you have
13 unrelated people living together in the same apartment, the
14 Village of Elberta can zone that out?

15 MR. PUTNEY: It may not be constitutional but I'm
16 quoting what their ordinance says and it just happens to be
17 what he wants to use the building for is exactly that. We
18 would have individual families in individual units. And
19 that is the definition of a dwelling unit on Page 4, to take
20 one, two, three or more rooms, combine them into one living
21 area.

22 THE COURT: Okay.

23 MR. PUTNEY: Single cooking and --

24 THE COURT: How many square feet?

25 MR. PUTNEY: Eight hundred.

(X)

1 THE COURT: Okay. Now --because --
2 MR. PUTNEY: Eight hundred is required under the
3 ordinance.
4 THE COURT: Now, do you think you can have 50
5 people living there? -- does that -- nowhere does that
6 ordinance MR. PUTNEY: The footage of the building is quite
7 large. I believe it's around --never, and I see where
8 you're con THE COURT: In that apartment, 800 square feet,
9 can you have 50 people living there? that definition other
10 than it's MR. PUTNEY: Oh, no, no, no, no, you have one
11 family. THE COURT: Well, look, if six bachelors or
12 four -- or THE COURT: Well, what's a family. in an apartment
13 in Elberta MR. PUTNEY: A family, I'm hoping, is defined as
14 at least a parent and their children, or adopted children,
15 or properly, you know, foster children or so forth, proper
16 guardians. appear to do so? Yes. But, to take your analysis
17 one step THE COURT: Can have you three bachelors living at
18 there? inition of dwelling unit and saying that's
19 essential MR. PUTNEY: That's not a family. which is
20 technical THE COURT: Unrelated? specific definition for
21 apartment MR. PUTNEY: That's not a family.
22 THE COURT: Can the Village of Elberta zone that
23 out? s no definition of apartment --
24 MR. PUTNEY: I don't think they can zone it out
25 but that's not their definition of an apartment and it

1 really doesn't bring us here today because --

2 THE COURT: No, they don't define an apartment.

3 Nowhere -- this district, C-1 commercial district, it is the
4 purpose of MR. PUTNEY: No, to accommodate. It doesn't say to

5 exclude. THE COURT: -- does that -- nowhere does that
6 ordinance define an apartment.

7 MR. PUTNEY: True. However, and I see where
8 you're coming from. However, under dwelling unit I don't
9 really see any other way you can read that definition other
10 than it's an apartment. accommodates resort, retail and service

11 operation. THE COURT: Well, look, if six bachelors or
12 four -- or four unrelated women want to live in an apartment
13 in Elberta, are you telling me the Village of Elberta can
14 zone them out? PUTNEY: True.

15 MR. PUTNEY: Constitutionally, no. Does their
16 ordinance appear to do so? Yes. But, to take your analysis
17 one step further, since we're looking -- and I'm looking at
18 the definition of dwelling unit and saying that's
19 essentially an apartment, and you're saying, which is
20 technically true, there's not a specific definition for
21 apartment, just one that sounds like one.

22 THE COURT: It's not technically true, it is true.
23 There's no definition of apartment --

24 MR. PUTNEY: That's right. think -- we don't plan on

25 doing that. THE COURT: -- in the zoning ordinance.

✓ (X)

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MR. PUTNEY: So -- they can put that as an

THE COURT: And it says, and it says it is the purpose of this district, C-1 commercial district, it is the purpose of this district to accommodate. It doesn't say to exclude. It says to accommodate.

MR. PUTNEY: True.

THE COURT: Commercial services offering goods and services as needed by village residents. This district also it says accommodates. It doesn't say excludes. It says this district also accommodates resort, retail and service operations, and I found that in the zoning ordinance the way some things are defined, as well as residential land uses and apartments under appropriate conditions.

MR. PUTNEY: True.

THE COURT: So it's designed to accommodate going apartments.

MR. PUTNEY: True.

THE COURT: So what's an appropriate condition? I think -- I think the village, can't the village say you can't have 18 people living in an apartment of 800 square feet?

MR. PUTNEY: Oh, I believe they could.

THE COURT: Yeah.

MR. PUTNEY: And I don't think -- we don't plan on doing that.



1 THE COURT: But they can put that as an
2 appropriate condition in a special use permit when you apply
3 for an apartment, can't they?
4 MR. PUTNEY: The ordinance gives them the power to
5 put reasonable conditions upon it.
6 THE COURT: That would be a reasonable condition.
7 MR. PUTNEY: That is. And the other point I was
8 going to make since the ordinance --
9 THE COURT: What they couldn't -- what they
10 couldn't do, could they say well, you can't have migrant
11 farm labor living there.
12 MR. PUTNEY: I don't think they can do that
13 constitutionally, no.
14 THE COURT: Okay.
15 MR. PUTNEY: And the only minute point I was going
16 to point out here, since as you're correct, they didn't
17 define apartment, that means we go back to the common, every
18 day dictionary definition of it.
19 THE COURT: Okay.
20 MR. PUTNEY: Which is on my side.
21 THE COURT: Okay. Anything else you want to tell
22 me?
23 MR. PUTNEY: No. This goes to the more tangential
24 issues or fringe issues I guess would be a way to say it,
25 that look, when you have deadlines in an ordinance, and this

1 goes more to the mandamus issue, superintending control,
2 when you have these deadlines, if you have to make these
3 decisions in 30 days and actually deliberate, if there's no
4 penalty on their end, it's mere -- these deadlines are mere
5 illusory.

6 THE COURT: Yeah, but you want to say -- you want
7 to say if the village, for reasons, one of which a member
8 of the -- the planning commission member of the village
9 council recuses so it takes the village a little while to
10 replace him, you have to say oh, we win automatically
11 because they went over the deadline. And I don't -- see, I
12 just -- I think that if the village is going forward in a
13 reasonable fashion and they miss a deadline, I don't think
14 that -- I think those deadlines are directory. But I don't
15 think you win on that basis necessarily.

16 MR. PUTNEY: I think they're just mere illusory
17 if you take them away and I think that's what --

18 THE COURT: Oh, I'm not going to take them away.

19 MR. PUTNEY: -- James Madison intended for us to
20 prevent from doing was to prevent illusory deadlines and
21 the tyranny of essentially returning us to the futile
22 system. We'll pick and choose which provisions of the
23 ordinance will apply to you. We know that we have a copy of
24 the ordinance but we're not providing it to you. And we're
25 not providing it to Mr. Becker.

1 you have THE COURT: But wait. See, you have your version
2 of what happened. There's an affidavit submitted by the
3 village clerk that she says I told him that I'll give you
4 one but it will take me a while to come up on my computer.
5 Anyway, she has a different version. So what we get into
6 is -- what we get into are contested facts. pointed out in
7 our brief MR. PUTNEY: But, if you read her affidavit ever
8 closely, and she stated upon request afterwards she printed
9 copies in January. If you assume that's true, then why on
10 February 6th when I send him down with money in hand is
11 there not a copy? That to me, Your Honor, shows it's a
12 false affidavit. And there's many things that I have to put
13 up with in practicing law day after day after day. It is
14 relentless. But one thing I cannot tolerate is when someone
15 is lying to me.

16 That's all I have. Thank you. n/a site plan?

17 THE COURT: Mr. Roy. good question, Your Honor. On
18 February 7 MR. ROY: May it please the Court, Edgar Roy on a
19 behalf of the Village of Elberta. Your Honor, is it okay if
20 I work from the desk? or land use permit -- remember, the
21 applicatio THE COURT: Sure. think was a request to rezone the
22 property. MR. ROY: I came here prepared to address the case
23 in a little different fashion than I'm going to address it
24 and I appreciate the Court's questions and I believe I may
25 have some direction on where the Court's headed. Obviously,

1 you have some questions for me that I will attempt to answer
2 to the best of my ability.

3 Your Honor, I think initially you focused on at
4 least a threshold issue relative to what the ZBA had before
5 it, and what I'll describe as the belated argument other
6 concerning apartments. And I think it was pointed out in
7 our brief that the first time the ZBA or Mr. Noffsinger ever
8 heard the word or term apartments was at the May 30th ZBA
9 meeting. We have to keep in mind that this process started
10 on December 12th when Mr. Loy Putney came into the office
11 and filled out an application for migrant housing. From
12 that day until May 30th we had various versions of what was
13 going to be put in that vacant building. We had labor
14 housing, migrant housing, transient housing, short-term
15 rentals. So part of the quandary here has to do with the

16 THE COURT: Why not ask him for a site plan?

17 MR. ROY: That's a good question, Your Honor. On
18 February 7th this case, or this application, started down a
19 good path. That's where after making a request for
20 rezoning, a request for land use permit -- remember, the
21 application filed second I think was a request to rezone the
22 property. On February 7th, Mr. Brad Putney enters the
23 equation in writing and he submits a request for the
24 issuance of a special land use permit. I can dig out what
25 it is he requested. It wasn't for apartments, I can

1 guarantee you that. And it didn't --ask for? They ask for
2 the master. THE COURT: What was it? extent they think they are
3 going to. MR. ROY: Bear with me just a second, Your Honor.
4 It was, I believe, February 7th. It's the application for
5 site plan review submitted for short-term rentals, other
6 transient lodging, signed by Loy Putney on February 7th. I
7 believe that was part of Mr. Brad Putney's submission then
8 because essentially he was running things on parallel
9 tracks. MR. ROY: I believe there was one available by mid
10 February. If you may recall, there are multiple letters
11 rapid fire from Mr. Brad Putney to the village as to what he
12 wanted them to do. First thing he wanted them to do was
13 automatically issue a land use permit. Then he said okay,
14 we want an appeal. We also want to have review of a special
15 use permit. So part of the quandary here has to do with the
16 I'll call it rapid fire submissions on the part of his
17 client. and I don't know if there is a zoning map or not.

18 THE COURT: Well, part of his quandary is he's not
19 getting the ordinance he says. take --

20 MR. ROY: Well, that may be true up until the
21 middle of February. I have yet to see a case, and I haven't
22 been doing this quite 30 years, where a lawyer who comes
23 into a case, the lawyer, not the client, communicates
24 directly and in writing and demands two things. Requests
25 two things. Maybe three things. They ask for the zoning

1 ordinance. You know what else they ask for? They ask for
2 the master plan. And then to the extent they think they are
3 going to be in front of the ZBA, they ask for any special
4 rules the ZBA has.

5 THE COURT: Yeah.

6 MR. ROY: That is the normal course --

7 THE COURT: You think they would have gotten them
8 from the Elberta clerk?

9 MR. ROY: I believe there was one available by mid
10 February, at least to me.

11 THE COURT: As I understand it, you have a zoning
12 ordinance which requires a map. And it says the map -- the
13 map is dispositive of everything in terms of what's zoned
14 what, and the village doesn't even have a map.

15 MR. ROY: I believe with regard to zoning
16 districts that is typically what happens. I didn't read the
17 ordinance and I don't know if there is a zoning map or not.

18 THE COURT: Well, I'm told that there isn't.

19 MR. ROY: And let me take --

20 THE COURT: And I read the ordinance. The
21 ordinance calls for it. The ordinance -- the ordinance says
22 hey, in any dispute, this map is to what's in what district
23 and where the district boundaries are, this map controls,
24 and the village doesn't even have it.

25 MR. ROY: Understood, Your Honor. And taking that

1 point a little further because I think this is the end point
2 of our discussion today possibly, the introductory section
3 to C-1 talks and specifically names apartments. But as you
4 track uses by right and uses by special use permit,
5 apartments are not listed so there is clearly --
6 THE COURT: Well, you know what that means in law?
7 You tell me because I'm sure going to tell you, but I'll
8 give you the chance to tell me if you want to.

9 MR. ROY: I appreciate that, Your Honor. What
10 that means -- obviously, you're the person sitting up there
11 in the black robe. What that means is, and this is not
12 uncommon in zoning ordinances, they are not a perfect
13 document. Typically the intent section doesn't necessarily
14 list specific land uses like this one does. It does
15 apartments, and retail, and some other things. It says that
16 in the introductory section.

17 THE COURT: And you're telling me that's
18 meaningless.

19 MR. ROY: Now, what I'm saying is there is an
20 omission in -- on that page of the ordinance which should, I
21 suspect, have apartments listed either by right or by
22 special use permit. Okay, there is totally --

23 THE COURT: So it's a mistake in the ordinance.

24 MR. ROY: It is a mistake in omission.

25 THE COURT: Yeah.

1 MR. ROY: Now, there are probably some other
2 omissions in the ordinance, maybe none pertinent to today's
3 hearing. But to take up Mr. Putney's argument that it's a
4 use by right --

5 THE COURT: Is there an omission in the ordinance
6 that should have said apartments excluding use by migrant
7 labor? Should that be --

8 MR. ROY: No, Your Honor.

9 THE COURT: Was that mistakenly left out of the
10 ordinance?

11 MR. ROY: Absolutely not, Your Honor. I think the
12 cleanest way to describe it is, without legally committing
13 the village, apartments should have been under special use
14 permit. The use of the word --

15 THE COURT: But they aren't, are they?

16 MR. ROY: They aren't. And that's why, and we
17 made this argument in our brief, Mr. Putney, Mr. Brad
18 Putney, had the opportunity to ask the planning commission
19 to classify use not otherwise listed. Where this case
20 started was until May 30th he should have gone to the
21 planning commission to say --

22 THE COURT: It's his -- it's his responsibility to
23 say to the appropriate -- to the appropriate personification
24 of the village hey, there's a mistake in your ordinance and
25 I want you to fix it. What -- all he wants is a land use

1 permit. It's not up to him to amend an ordinance.

2 MR. ROY: Well, I guess I would respond this way,
3 Your Honor. Until May 30th we were talking about migrant
4 housing, a use not identified anywhere in the ordinance.

5 THE COURT: Do you know what migrant housing is?

6 MR. ROY: Do not but that was his opportunity to
7 go in front of the planning commission to have them classify
8 migrant housing.

9 THE COURT: Oh, come on, how about the zoning
10 administrator asking.

11 MR. ROY: Asking what?

12 THE COURT: Asking what do you want? What are you
13 after? Say show me a drawing. Oh, that's apartments.

14 MR. ROY: Well, initially it was presented that it
15 was a residential licensed care facility and therefore,
16 under Mr. Brad Putney --

17 THE COURT: No, it wasn't presented. It was not a
18 residential licensed care facility. It was a residential --
19 a licensed residential facility. And then Mr. Putney says
20 he didn't have the benefit of the ordinance because the
21 clerk wouldn't give him one. They said oh, here's all you
22 need. We've made that decision. And so he didn't have the
23 definition part where it refers to adult foster care
24 facility. I mean, this is absolutely ridiculous. This is
25 absolutely ridiculous. This is an outrage. This is an

1 absolute outrage that any citizen can't go into the village
2 office and say to the village clerk I want a copy of the
3 zoning ordinance. And the village can fairly charge them a
4 reasonable fee that should essentially be at cost. Right?

5 MR. ROY: Agreed. There did come a point in time
6 where the ordinance was available, though, and there was no
7 request made for it. Because I think what happened here,
8 Your Honor, and again, I don't come into the picture until
9 April.

10 THE COURT: Well, I know what happened. We got
11 people talking past one another instead of talking to one
12 another.

13 MR. ROY: You said it better than I could, Your
14 Honor. But back to issue of apartments, because I think
15 that's really at least one of the focal points here, and
16 that is if an apartment isn't listed by the use by right or
17 by special use permit, there's clearly an omission in the
18 ordinance. There's a mechanism to amend the ordinance to
19 put it at some location --

20 THE COURT: Doesn't have to have -- what is -- you
21 tell me, what is a zoning ordinance?

22 MR. ROY: An ordinance that --

23 THE COURT: It's an exercise of what power?

24 MR. ROY: The legislative power.

25 THE COURT: No, let's get beyond that. What

1 legislative power? *ity, welfare and morals, it will be*
2 upheld. MR. ROY: Enabling Act for the State of Michigan.
3 can't -- THE COURT: Well, yeah, but let's -- it's an
4 exercise of the police power, isn't it? I mean, we can go
5 back to what's the U.S. Supreme Court case in the 1920's,
6 Shaker Heights, was it, or no. *the Court was trying to get*
7 *Mr. Putney* MR. ROY: Euclid, Your Honor? *at did the ZBA deny.*
8 *Did the ZB* THE COURT: Euclid, yeah. *tm* I get these Ohio
9 suburbs mixed up. But Euclid, it's an exercise of the
10 police power. So what's that mean? Zoning is an exercise
11 of the police power to protect the public health, safety,
12 and in another era, the U.S. Supreme Court said in Euclid,
13 and morals. *ng* Health, safety and morals. *I* So you can't run a
14 house of ill repute in the apartments either. *in the record,*
15 *prior to* Now, this is what I was taught in law school many,
16 many years ago. It's an exercise of the police power *at the*
17 restricting people's liberty. *ns* And it's a light touch, *but*
18 exercise of the police power. *ip* It's not like -- it's not
19 like the power to arrest and prosecute criminally and put,
20 you know, put in jail or prison. It's a light touch *mercial*
21 exercise of the police power. And so when you're going to
22 tell people okay, it's your property, but there are some
23 things you can't do, all right, lay them out. This is what
24 you can't do. And if those are reasonably discernible, and
25 reasonably related, rationally related, to protecting the

1 public health, safety, welfare and morals, it will be
2 upheld. But if the zoning ordinance says apartments, you
3 can't -- that's part of the purpose, you can do it. No
4 where is it forbidden. Then you can do it.

5 MR. ROY: I understand the Court's thought
6 process. We come back to what the Court was trying to get
7 Mr. Putney to commit to, and that is what did the ZBA deny.
8 Did the ZBA deny a request for apartments? Neither Mr.
9 Noffsinger nor the ZBA denied a fair, legitimate,
10 appropriately described request for apartments. That was,
11 to be a little pointed here, Your Honor, Mr. Brad Putney's
12 realization at the May 30th ZBA hearing. I may be wrong,
13 but I'm going to put out a challenge. I would ask Mr.
14 Putney, Brad Putney, to show this Court where in the record,
15 prior to the transcript of May 30th, when he or his client
16 ever used the word apartments. He likes to suggest that the
17 village wants to pick and choose what it wants to apply, but
18 he has picked and chosen multiple requests to the village.

19 THE COURT: If a person -- if a person wants to
20 have apartments in the Village of Elberta, in the commercial
21 district, is that -- is a special use permit necessary?

22 MR. ROY: I would say the ordinance is silent at
23 this point.

24 THE COURT: Well, I don't think it is.

25 MR. ROY: Well --

1 THE COURT: It says apartments under appropriate
2 conditions. special use permit, didn't they? Didn't it?
3 MR. ROY: Your Honor -- y made an interpretation.
4 THE COURT: Are the conditions enumerated there
5 in the ordinance?
6 MR. ROY: No, Your Honor. do is apply for a
7 special use THE COURT: Okay. toents in the C --
8 MR. ROY: But we have to at least have a starting
9 point, and that is the village council, under the Michigan
10 Zoning Enabling Act, is allowed to zone property consistent
11 with the master plan's established uses and conditions.
12 THE COURT: That's fine. Let them. But --
13 believe. MR. ROY: There's a gap here. I mean, if I could
14 wave a magic wand, I would put apartments, I would, I would
15 put apartments. n every day common sense definition.
16 Apartments THE COURT: You know what? Did the Zoning Board
17 of Appeals, what did they do with his special use permit
18 application? tutional authority, in fact, it would offend
19 the const MR. ROY: I believe the Zoning Board of Appeals --
20 I don't believe they made a decision on Mr. Noffsinger's --
21 let me answer it the other way. Mr. Noffsinger I believe
22 indicated he did not make a decision on -- the Village of
23 Elberta. THE COURT: That's right. of Hispanic origin.
24 they're zo MR. ROY: Okay. Therefore, I guess it
25 practically --

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THE COURT: The Zoning Board of Appeals denied -- denied the special use permit, didn't they? Didn't it?

MR. ROY: I believe they made an interpretation. I don't know whether -- and I would have to look at their three motions.

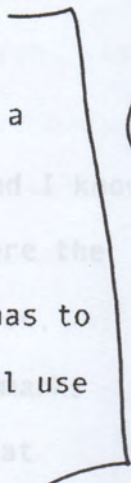
THE COURT: All he has to do is apply for a special use permit for apartments in the C --

MR. ROY: C-1 district.

THE COURT: C-1 district. That's all he has to do. They've got to give him apartments under special use permits.

MR. ROY: Assuming he meets the criteria? I believe that's absolutely correct.

THE COURT: The criteria is apartments. So that's going to have an every day common sense definition. Apartments are living units. That's where people live. And you and I agree -- you and I agree, the Village of Elberta has no constitutional authority, in fact, it would offend the constitution of the State of Michigan and the United States to put a condition on that agricultural workers cannot live in apartments in the Village of Elberta, migrant farm workers cannot live in apartments in the Village of Elberta. And especially if they're of Hispanic origin, they're zoned out. You and I agree can't be any of those things, can it.



1 MR. ROY: Cannot, Your Honor.
2 THE COURT: That's right.
3 MR. ROY: And the record should be clear that the
4 village has never indicated that there would be any
5 legislation or action that would preclude any race, As
6 nationality, from living in the village.
7 THE COURT: Look, you and I know -- you and I know
8 in the record before this Court there is nothing where the
9 village has ever officially taken any kind of position,
10 remotely like that. But you and I also know that remarks
11 have been made where people have held opinions to that
12 effect that it would be undesirable. Now, people are
13 entitled to their own opinions, and I'm not telling people
14 they can't have opinions, but I am saying that in no way can
15 that ever be the position of governmental authority.
16 MR. ROY: Agreed, Your Honor. I think, continuing
17 the discussion with the Court about the apartments, there's
18 one significant piece of information that was developed I
19 believe as part of the record on appeal, and that is Mr. Loy
20 Putney was asked at one of the ZBA meetings what the state
21 criteria was for migrant housing.
22 THE COURT: Well, that's -- I don't know what the
23 criteria are.
24 MR. ROY: We do.
25 THE COURT: But he's got to meet that. And you

(X)

1 can -- and that's very easy to do in a special use permit.
2 Condition (R), if apartments are to be used as housing for
3 farm workers, the standards of state statutes and
4 regulations apply. That's not difficult, is it?

5 MR. ROY: No, Your Honor, but here's the rub. As
6 I recall, Mr. Loy Putney's statement is they can have one
7 migrant worker for 50 square feet. It's a very intense
8 residential use that is significantly different than using
9 Mr. Putney's -- excuse me, Mr. Putney, I was very kind and
10 gracious to you to let you finish so I would ask you to wait
11 your turn.

12 THE COURT: Well, look, you know what? Even if --
13 even if it's not in -- even if it's not in a special use
14 permit, that if used to house migrant farm labor, state
15 standards apply. Even if that's not in the special use
16 permit, they still apply, don't they, if that's what it's
17 used for.

18 MR. ROY: That would be correct, Your Honor, but
19 here's the ultimate rub with regard to the approval. We
20 have heard a lot today about apartments and common sense
21 definition of apartments. But that's never what Loy Putney
22 intended to do. He rather wanted migrant housing because
23 that's regulated at the state level and there's far more
24 intensity of use that can occur in migrant labor camps than
25 can in what we have generally referred to today as

1 apartments. You asked a question about how many people can
2 live on 800 square feet. So I'm not prejudging anything.
3 I'm simply suggesting the language in the ordinance, if I
4 see where the Court is going with regard to conditions, it's
5 not -- they are not intending, never intended, to do
6 apartments. So we should not be misled. This record should
7 not go in a different direction. They may say apartments,
8 but they were asking and I believe wanted to build migrant
9 housing. And maybe we -- workers, certain kinds of
10 laborers. THE COURT: An apartment is an apartment. People
11 live in apartments. want to live in the village.
12 MR. ROY: Understood, Your Honor. But I believe
13 there was -- density of land use. Not who is using the
14 property. THE COURT: If there are special -- if there are
15 special regulations from the state of Michigan that apply
16 when those people are migrant agricultural workers, those
17 conditions apply of their own force. the Zoning Board of
18 Appeals. MR. ROY: Understood, Your Honor. That is
19 without prejudice. THE COURT: If the Village of Elberta has
20 conditions that apply per their zoning ordinance, those
21 conditions apply per their zoning ordinance. fire the part
22 that I do. MR. ROY: But isn't the challenge that the village
23 and Loy Putney face is because the ordinance only says
24 apartments with conditions? That could mean, the ZBA could
25 interpret that phrase to mean, because that I believe is



1 really the body that should interpret it, all the conditions
2 under the special use permit, all the conditions under the
3 site plan review, that's a logical interpretation of that one
4 phrase. And it clearly follows -- don't apply -- or I'm

5 THE COURT: I don't know, I can tell you very
6 plainly, any conditions the village imposes on a special use
7 permit for apartments have to be lawful. You can't have
8 exclusionary zoning that says implicitly that the village
9 considers certain kinds of workers, certain kinds of
10 laborers, as somehow less desirable than other kinds of
11 people who work and want to live in the village.

12 MR. ROY: Understood, Your Honor. It really comes
13 back to intensity of land use. Not who is using the
14 property, but how the property is being used. That would be
15 my -- that would be my opinion, Your Honor.

16 So I guess maybe to summarize, unless the Court
17 has other questions, I believe that the Zoning Board of
18 Appeals' decision can and should be affirmed. That is
19 without prejudice, too.

20 THE COURT: If I -- I'm only going to affirm part
21 of it. But you have to understand, when I affirm the part
22 that I do, it's because you say the appellant did not
23 clearly raise the issue of apartments and have it before the
24 zoning administrator and Zoning Board of Appeals. And if he
25 didn't, then virtually as soon as I sign an order, he can go

(X)

1 back and he can apply for apartments under a land use
2 permit. Zoning administrator is going to have to act on it.
3 And he's going to have the right to appeal it. And that one
4 year provision in the ordinance didn't apply -- or I'm
5 sorry, doesn't apply because he's not -- he's not making an
6 application for the same use as the one that was denied by
7 the Zoning Board of Appeals.
8 MR. ROY: You said it better than I could, Your
9 Honor. I think with that observation I will rest. Thank
10 you.
11 THE COURT: But, inasmuch as -- inasmuch as the --
12 and insofar as the Zoning Board of Appeals affirmed the
13 denial of the special use permit, the decision of the Zoning
14 Board of Appeals is vacated in that there was no decision on
15 a special use permit by the zoning administrator.
16 Now, when this thing -- if appellant submits a new
17 land use permit for apartments or for whatever, I don't
18 know, maybe he wants to build a castle there, but when he
19 submits a new land use permit, this Court does expect that
20 it will be acted on in an entirely timely fashion under the
21 ordinance.
22 You know, one of the things that slowed this down
23 was a provision of the ordinance provided the applicant
24 either had to have a power of attorney from the land owner
25 if the applicant was not himself the land owner. And in the

1 process when Mr. Loy Putney, the appellant, initiated this,
2 he didn't have that power of attorney from the bank. And
3 somewhere along in this whole thing he became the owner and
4 he didn't need it anymore. He got it at one point when the
5 bank was the owner. So I think that these things that
6 slowed it down aren't going to slow it down anymore.

7 Now, with respect to mandamus, we've got -- we've
8 got material facts in dispute, and I can't issue a writ of
9 mandamus with material facts in dispute. And I'm not going
10 to be messing around holding evidentiary hearings to decide
11 who is right on those material facts in dispute, who has the
12 version that is accurate. What I am going to do is in lieu
13 of mandamus, and I don't think I have superintending control
14 over the ZBA, but what I am going to do is I'm going to
15 consider Mr. Putney's, plaintiff's, request for mandamus to
16 be in the circumstances a request for declaratory judgment.
17 And I will declare that it is the obligation of the Village
18 of Elberta to have copies of their zoning ordinance,
19 complete copies available, and I don't care if they don't
20 have them there on paper. They can print them off the
21 computer at will within a matter of seconds. But they have
22 to make copies available to any member of the public who
23 asks at a reasonable fee that would be essentially the
24 equivalent of the cost of providing that. And that's their
25 obligation under the law.

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Anything else? All right?

MR. PUTNEY: Just one follow-up question. I'm unclear if the Court made any decision if the apartment falls under land use permit or special use permit?

THE COURT: Well --

MR. PUTNEY: Or is the Court silent on that?

THE COURT: I'm silent. Run it both ways. But I don't think it's unreasonable, if we read -- if we read the C-1 commercial district, it's clear the district accommodates apartments. That's a proper use in a C-1. So it says under appropriate conditions. Well, I suppose the village really has a choice. The village can look at what's proposed and say all right, we'll grant it under a land use permit. Or, the village can look at what's proposed and say well, we think from the proposal that there might be conditions appropriate to this so make it a special use permit.

But you have to understand, when you go for a -- when you go for a special use permit for apartments, you have a right in C-1 to have those apartments. The conditions have to be reasonable and appropriate conditions under a special use permit. The Zoning Board of Appeals can't -- or the zoning administrator can't sit there and say well, I'm not going to get -- you can't have apartments here. It's got to be -- it's got to be reasonable and

key

1 appropriate conditions. All right? Putney's entire
2 complaint MR. ROY: Understood, Your Honor. Court did before.
3 and that THE COURT: So I'll affirm -- I'll affirm the
4 denial of the land use permit without prejudice to his living
5 making an application for apartments. And I'll vacate the
6 denial of the special use permit. And you can have the
7 declaratory judgment that I stated, Mr. Putney, in your
8 complaint for mandamus. and that's a -- and then that's a
9 final order MR. PUTNEY: I believe I understand the order.
10 I'll draft that and circulate it.
11 THE COURT: You've been sitting there quietly, Ms.
12 Olsen. MS. OLSEN: In its entirety so all actions that
13 he's brought MS. OLSEN: I have, Your Honor. If I could just
14 have some clarification. As I understand with respect to
15 Mr. Putney's motion for mandamus/superintending control.
16 THE COURT: I'm denying mandamus and final orders in
17 superintending control.
18 MS. OLSEN: Okay. understand. It's not really
19 relevant THE COURT: And I'm granting a declaratory
20 judgment. it's stated in the finding of facts that migrant
21 housing's MS. OLSEN: Okay. Fair enough. And then with
22 that denial, Your Honor, and with the Court's ruling on the
23 underlying action, it would seem to me that going forward on
24 any actions beyond superintending control at this point ever
25 would be completely a waste of time and moot. So I would

1 ask either that the Court dismiss Mr. Putney's entire
2 complaint or at the very least do what the Court did before,
3 and that was stay the action.

4 THE COURT: No, that's a final order. I'm giving
5 him declaratory judgment as to the obligation to provide
6 copies of the zoning ordinance.
7 MS. OLSEN: Okay.
8 THE COURT: And that's a -- and then that's a
9 final order and disposes of the case.

10 MR. PUTNEY: Understood.
11 THE COURT: In its entirety.

12 MS. OLSEN: In its entirety so all actions that
13 he's brought under that claim.

14 THE COURT: Yes, that's right.
15 MS. OLSEN: Fair enough.

16 THE COURT: These are going to be final orders in
17 each of the two cases.

18 MR. PUTNEY: I understand. It's not really
19 relevant at this point but I would like to state it.
20 Although it's stated in the finding of facts that migrant
21 housing's allowed only 50 square feet per person, it's
22 actually a hundred under state law.

23 MR. ROY: Sorry.

24 THE COURT: Well, it's whatever -- it's whatever
25 it is under state law.

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MR. PUTNEY: Exactly.

THE COURT: All right.

MR. PUTNEY: Thank you.

MR. ROY: It gets back to your question, Your Honor, about this 800 square feet for a dwelling unit, how many people obviously under that calculation, eight people per apartment. So I suspect we'll work through it. If somebody is unhappy --

THE COURT: You know, look, he can have apartments there under the ordinance. And if your ordinance is incomplete and needs refashioning, that's up to the village.

MR. ROY: Understood, Your Honor.

MR. PUTNEY: Thank you.

MR. ROY: Thank you, Your Honor. We appreciate a very fair ruling from the Court.

MS. OLSEN: Thank you, Your Honor.

MR. PUTNEY: Thank you for your time.

(Proceedings concluded at 3:37 p.m.)

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Dated: This 12th day of February, 2013.

