2022 IL App (2d) 200204-U
Nos. 2-20-0204 and 2-20-0309 cons.
Order filed May 26, 2022

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

JAMES BOROS, ED CLADEK, SAMUEL GIRGIS, RITA GIRGIS, NETASHA SCARPINITI, ALI NILI, and JAMES LOVELACE, Plaintiffs-Appellants, v. THE VILLAGE OF OAK BROOK, Defendant-Appellee (Chicago Title Land Trust Company, as Trustee under Trust Agreement 11-12497 dated December 19, 2011, Intervenor-Appellee).	)	Appeal from the Circuit Court of Du Page County. No. 18-MR-849 Honorable Paul M. Fullerton, Judge, Presiding.

JUSTICE BIRKETT delivered the judgment of the court.
Presiding Justice Bridges and Justice Zenoff concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court properly granted judgment on the pleadings on counts I and II of the third amended complaint and properly dismissed count III.

¶ 2 This case returns to us after an initial dismissal for lack of jurisdiction due to an appeal from a facially nonfinal order. *Boros v. Village of Oak Brook*, No. 2-18-0967 (2020) (unpublished summary order under Illinois Supreme Court Rule 23(c)) (*Boros I*). This time, the parties have

gotten their jurisdictional ducks in a row. Before us now, plaintiffs, James Boros, Ed Cladek, Samuel and Rita Girgis, Netasha Scarpiniti, Ali Nili, and James Lovelace, have litigated to completion their complaint seeking a declaratory judgment against defendant, the Village of Oak Brook (Village), and intervenor, Chicago Title Land Trust Company, as Trustee under Trust Agreement 11-12497, dated December 19, 2011 (owner) (collectively, defendants) regarding the vacation of a street and ensuing subdivision of the subject property. Specifically, plaintiffs appeal the orders of the circuit court of Du Page County granting judgment on the pleadings in favor of defendants regarding counts I and II and dismissing with prejudice count III of plaintiffs' third amended complaint. On appeal, plaintiffs argue that the vacation of the street by the Village did not serve the public interest, the Village did not charge the fair market value for the vacated land, the vacation created an illegal half street in violation of the Village Code, and the vacation ordinance became null and void by its terms when defendants did not fulfill certain conditions. We affirm.

¶ 3 I. BACKGROUND

¶ 4 We summarize the relevant facts appearing in the record on appeal. The property at issue is a 1.799-acre, roughly rectangular parcel of land with frontage on Wennes Court, York Road, and Luthin Road located in the Village (subject property). Both Wennes Court and Luthin Road do not have curbs, gutters, storm sewers, sidewalks, or streetlights. The subject property borders two parcels owned by the Girgises. The Girgises' properties contain a privately owned pond with no outflow, and which plaintiffs allege to be overfilled and eroding the land around it. Plaintiffs further allege that the pond has no more capacity to hold any more water, and drainage from the

subject property drains into it, which will exacerbate the problems associated with it. The subject property is zoned R-2, requiring a minimum lot size of one acre.

¶ 5 Plaintiffs allege that, in 2016, the owner acquired the subject property with full knowledge of the applicable zoning and subdivision provisions. In 2016, the owner sought to acquire some land within the Luthin Road right-of-way. The Luthin Road right-of-way abutting the subject property had a width of 100 feet. The owner intended to acquire only a portion of the right-of-way sufficient to make the aggregate area of the subject property plus the right-of-way large enough for subdivision into two lots without requiring a variance. Plaintiffs opposed this plan, and the Village rejected the owner's initial attempt to obtain a portion of the Luthin Road right-of-way via a street vacation.

¶ 6 In June 2017, the owner applied for a zoning variation and waivers from certain provisions of the Village's Subdivision Code, seeking to subdivide the subject property, as it existed, into two lots. On September 12, 2017, the Village denied the owners application for a variance and also temporarily suspended variances from minimum lot sizes for the purpose of subdividing the parcels into more lots. On December 6, 2017, the owner sued the Village, challenging the Village's denial of the owner's requests for variances (zoning lawsuit).

¶ 7 On April 16, 2018, while the owner's zoning lawsuit was still pending, the owner again requested the Village to vacate a portion of the Luthin Road right-of-way, apparently to settle the zoning lawsuit. The framework of the settlement would encompass the vacation of 0.201 acres from the Luthin Road right-of-way in exchange for $80,000 from the owner along with the conveyance back to the Village of an easement guaranteeing continued public use and access to the Luthin Road right-of-way. The remaining portion of the Luthin Road right-of-way abutting

the now-enlarged subject property would have a width of 64 feet. Plaintiffs assert that, upon learning of the plan to settle the pending zoning lawsuit, the Girgises interjected themselves into the settlement negotiations in an effort to block the settlement by offering $120,000 for the 0.201 acres to be vacated; plaintiffs further assert that the Girgises' offer represented the "fair market value" as calculated by the purported price per square foot of the subject property applied to the 0.201 acres to be vacated. According to plaintiffs, the Village "ignored" the Girgises' offer and proceeded with its plans to settle the zoning lawsuit, which provided the owner with the requisite 2.0 acres for subdivision into two one-acre lots.

¶ 8 On May 8, 2018, the Village adopted the vacation ordinance (Oak Brook Ordinance 2018-ST-PV-EX-S-1532 (eff. May 8, 2018)) which authorized the vacation of a part of Luthin Road. The vacation ordinance contained the following recitals explaining the purpose of the ordinance:

> "WHEREAS, the Village is the owner of a public right-of-way commonly known as Luthin Road; and
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> WHEREAS, [the owner] is the owner of [the subject property]; and
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> WHEREAS, the [subject property] is adjacent to and abuts the Luthin Road right-of-way for a distance of approximately 246.21 feet; and
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> WHEREAS, that part of the Luthin Road right-of-way which abuts the [subject property] contains a width of approximately [100 feet]; and
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> WHEREAS, Luthin Road is a 'local street' within the Village, and the Village typically requires a [66-foot] right-of-way width for a local street, although the actual right-of-way widths for local streets throughout the Village vary from location to location; and

WHEREAS, the [subject property] is comprised of approximately 1.799 acres and lies within the R-2 Single-Family Detached Residential district of the Village; and

WHEREAS, [the owner] requests the Village to approve a plat of vacation which vacates approximately .201 acres of the Luthin Road right-of-way which abuts the [subject property] (the 'Vacated Right-of-Way') and which vests title in the Vacated Right-of-Way in the [subject property] and [the owner]; and

WHEREAS, [the owner] makes this request because the addition of the Vacated Right-of-Way to the [subject property] will allow [the owner] to petition the Village for the subdivision of the [subject property] from the existing one (1) lot into two (2) lots which conform to the minimum lot size requirement of the R-2 Single-Family Detached Residential District; and

WHEREAS, if the plat of vacation is approved, the Luthin Road right-of-way will contain a width of approximately [64 feet]; and

WHEREAS, [the owner] has agreed to provide easements over the Vacated Right-of-Way in favor of the Village for view, for access, for drainage, grading and utilities, and for temporary construction purposes pursuant to a Grant of Easement; and

WHEREAS, the Village has determined that the fair value of the Vacated Right-of-Way is [$80,000], and [the owner] has agreed to pay that amount as compensation to the Village for the Vacated Right-of-Way; and

WHEREAS, the Village President and the Board of Trustees find that the Vacated Right-of-Way is unimproved and underutilized by the Village; and

WHEREAS, the Village President and the Board of Trustees find that continuing to own and maintain the full [100 feet] of the Luthin Road right-of-way adjacent to the [subject property] is not in the public interest, and find that the public interest will be sufficiently served by the Village continuing to own a [64-foot] public right-of-way at this location; and

WHEREAS, the Village President and the Board of Trustees find that approving the plat of vacation will not prevent or limit access to Luthin Road by surrounding property owners or the public; and

WHEREAS, the Village President and the Board of Trustees find that the afore-mentioned Grant of Easement over the Vacated Right-of-Way will protect the Village and the public, find that approving the plat of vacation will allow for the productive development of the [subject property], and find that the Village will receive fair compensation for the Vacated Right-of-Way; and

WHEREAS, the Village President and Board of Trustees desire to approve the plat of vacation for the Vacated Right-of-Way, finding that the public interest will be subserved by this vacation and finding that this vacation will promote and serve the public good."

We note that plaintiffs characterize the recitals of the vacation ordinance as little more than window dressing to "mak[e] it appear as if the public interest [were] subserved," when the purpose of the vacation ordinance was to "convey[] public land for a private purpose."[1]

[1] This characterization is argumentative. See Ill. S. Ct. R. 341(h)(6) (eff. Oct. 1, 2020) (the statement of facts "shall contain the facts necessary to an understanding of the case, stated

¶ 9 Section 3 of the vacation ordinance provided three conditions that had to be met for the vacation and transfer of the Luthin Road right-of-way to occur. First, the owner was required to pay the Village $80,000 for the vacated land (the payment condition). Next, the Village was required to approve an ordinance approving a preliminary and final plat of subdivision dividing the subject property into two lots including the vacated land (the subdivision condition). Finally, the parties were required to approve an easement over portions of the subject property from the owner to the Village (the easement condition). Section 4 of the vacation ordinance provided that, if any of the section 3 conditions were not satisfied, the vacation ordinance "shall automatically become null and void without any further action" of the Village, and the Village "shall not" authorize the plat of vacation.

¶ 10 On June 12, 2018, the Village passed the subdivision resolution (Oak Brook Resolution 2018-SR-PP+FP-EX-R-1731 (dated June 12, 2018)), which approved the preliminary and final plat for the subdivision of the combined subject property and vacated land. The subdivision resolution, in addition to dividing the subject property into a new, two-lot, Wennes Estates Subdivision, also granted the owner waivers from the Village Code regarding the pavement width, curbs and gutters, sidewalks, and street lighting. The subdivision resolution referenced the payment condition and formally approved the grant of easement between the Village and the owner.

¶ 11 Plaintiffs assert that there are issues associated with the subdivision resolution. Plaintiffs first note that the resolution states that, on June 12, 2018, the Village President signed the

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accurately and fairly without argument or comment").

resolution, yet the Village maintains that, on June 20, 2018, the Village President signed the resolution. Plaintiffs also note that the subdivision resolution dated June 12, 2018, included a legal description of the combined subject property that did not include the vacated land. Plaintiffs last note that, on June 26, 2018, the Village President signed another subdivision resolution that included the vacated land in the legal description, but they assert that the Village Board did not vote on a new resolution dated June 26, 2018.

¶ 12 To round out the activities pursuant to the vacation ordinance and the subdivision resolution, we observe that, on August 3, 2018, the owner paid the Village $80,000 pursuant to the terms of the vacation ordinance. According to the owner, the Village had represented that August 3 was the deadline for payment under the vacation ordinance. The owner further notes that August 3 was within 45 days of the date the Village President signed the subdivision resolution. On September 3, 2018, the Village Clerk and the Village Engineer signed their approvals of the final plat of subdivision.

¶ 13 Also on June 12, 2018, plaintiffs filed their initial complaint in this matter, solely against the Village. On June 19, 2018, the owner requested leave to intervene. On June 22, 2018, plaintiffs filed their first amended complaint. The first amended complaint sought declaratory relief and comprised two counts: count I challenged the vacation ordinance and count II challenged the subdivision resolution. Defendants filed motions for judgment on the pleadings and, on September 25, 2018, the trial court heard the parties' arguments on the motions for judgment on the pleadings.

¶ 14 On October 3, 2018, while the trial court's decision on the motions for judgment on the pleadings was still pending, plaintiffs filed a motion for leave to file a second amended complaint. Plaintiffs proposed to add a count III seeking declaratory relief and contending that the failure of

the three conditions (the payment condition, the subdivision condition, and the easement condition) of the vacation ordinance rendered the vacation ordinance null and void.

¶ 15 On October 30, 2018, the trial court granted the motions for judgment on the pleadings in favor of defendants. The trial court reasoned that plaintiffs' first amended complaint contained conclusions rather than facts showing that the vacation did not serve the public interest. The court further observed that the vacation ordinance itself explained the benefits to the public of the vacation. The court also rejected plaintiffs' contention regarding the fair market value of the vacated land, finding that the Village's determination was sufficient because, under the statute, there was no requirement of compensation. The court also rejected plaintiffs' argument that the vacation created an illegal half street, noting that the vacation ordinance did not "result in a subdivision of property or the creation of a new street," and plaintiffs could not base their argument on the requirements of the Village's subdivision regulations because they did not apply to the vacation ordinance. The court granted plaintiffs leave to plead their proposed count III.

¶ 16 On November 2, 2018, plaintiffs filed their second amended complaint. Plaintiffs restated the resolved counts I and II as pleaded in the first amended complaint. Count III sought declaratory relief alleging that the owner and the Village failed to timely fulfill the payment and easement conditions resulting in the nullification of the vacation ordinance by the terms of section 4 of the vacation ordinance. On November 28, 2018, defendants filed motions to dismiss count III of the second amended complaint. On November 29, 2018, the owner filed a petition for sanctions against plaintiffs regarding the original and first amended complaints. On February 15, 2019, the trial court denied the owner's petition for sanctions.

¶ 17 Before the trial court ruled on the motions to dismiss the second amended complaint, on June 18, 2019, plaintiffs filed a motion for leave to file their third amended complaint, which was granted. The trial court also set a briefing schedule on defendants' motions to dismiss. Eventually, on January 28, 2020, the matter advanced to oral argument, and, on February 11, 2020, the trial court granted with prejudice the motions to dismiss.

¶ 18 We backtrack a bit to describe the timeline of the appeals in this matter. On November 27, 2018, plaintiffs filed a notice of appeal from the October 30, 2018, order (Appeal No. 2-18-0967). On November 30, 2018, plaintiffs filed a motion seeking a Supreme Court Rule 304(a) (eff. Mar. 8, 2016) finding from the trial court regarding the October 30 order, apparently in order to evade any delay the then-pending motion for sanctions could have caused. On January 4, 2019, the trial court granted plaintiffs' request for Rule 304(a) language. On January 14, 2019, plaintiffs filed a second notice of appeal challenging the October 30 order, this time pursuant to Rule 304(a) (Appeal No. 2-19-0046). The appeals were consolidated in this court. During the pendency of this appeal (*Boros I*), the parties litigated the motions to dismiss. Following the February 11, 2020, dismissal of the third amended complaint, on March 10, 2020, plaintiffs filed a notice of appeal (Appeal No. 2-20-0204). While the appeal was pending, on May 12, 2020, we released our summary order in *Boros I*, holding that, because plaintiffs had been allowed to file the second amended complaint, we lacked jurisdiction and dismissed the appeal. Perhaps realizing the jeopardy into which this order placed the appeal from dismissal of the third amended complaint, because there was no order specifically dealing with counts I and II, the parties returned to the trial court and, on May 22, 2020, the court expressly granted judgment on the pleadings in favor of defendants on counts I and II of the third amended complaint pursuant to the trial court's October

30, 2018, judgment. On May 27, 2020, plaintiffs filed another notice of appeal challenging both the February 11, 2020, and May 22, 2020, orders (Appeal No. 2-20-0309). We consolidated the two appeals.

¶ 19 II. ANALYSIS

¶ 20 On appeal, plaintiffs challenge the trial court's substantive rulings granting judgment on the pleadings for counts I and II and dismissing with prejudice count III of the third amended complaint. Specifically, plaintiffs argue that the vacation ordinance does not serve the public interest, that the Village did not charge fair market value for the vacated land, that the vacation created an illegal half street, that they had standing to pursue their claims in count III, and defendants' failures to timely fulfill the payment, subdivision, and easement conditions resulted in the nullification of the vacation ordinance by its own terms. We consider each contention in turn.

¶ 21 A. Jurisdiction

¶ 22 As an initial matter, we must consider whether plaintiffs established jurisdiction. An appellate court has an independent obligation to consider its jurisdiction and to dismiss the appeal if jurisdiction is lacking. *Peraino v. County of Winnebago*, 2018 IL App (2d) 170368, ¶ 12. As noted above, we dismissed *Boros I* for lack of jurisdiction when the trial court allowed plaintiffs to replead and add count III, because this rendered the October 30, 2018, order nonfinal notwithstanding the inclusion of Rule 304(a) language. *Boros I*, No. 2-28-0967, ¶¶ 3-6. On February 11, 2020, the trial court granted with prejudice defendants' motions to dismiss count III of the third amended complaint. The order did not mention counts I and II. As noted in *Boros I*, the filing of an amended complaint supersedes the earlier complaints. *Snitowski v. NBC Subsidiary (WMAQ-TV), Inc.*, 297 Ill. App. 3d 304, 315 (1998). Thus, the February 11, 2020, order left

unresolved counts I and II. On March 10, 2020, plaintiffs filed a notice of appeal from the February 11, 2020, order (Appeal No. 2-20-0204), which was a nonfinal order due to the failure to include the disposition of counts I and II. This does not, however, result in a lack of jurisdiction. Rule 303(a)(2) (eff. July 1, 2017) includes a savings provision to rescue a premature notice of appeal once any pending claims are resolved. When, on May 22, 2020, the trial court entered the order formally disposing of counts I and II of the third amended complaint, the March 10, 2020, notice of appeal became effective. *Id.* Thus, we have jurisdiction over Appeal No. 2-20-0204.

¶ 23 In addition, upon our issuance of *Boros I*, because there may have been a jurisdictional concern with Appeal No. 2-20-0204, plaintiffs returned to court to obtain an express disposition of counts I and II. Following the trial court's May 22, 2020, order, on May 27, 2020, plaintiffs filed a notice of appeal from the orders of February 11, 2020, and May 22, 2020 (Appeal No. 2-20-0309). This notice of appeal challenged the February 11, 2020, order dismissing with prejudice count III of the third amended complaint, and the May 22, 2020, order granting judgment on the pleadings in favor of defendants on counts I and II of the third amended complaint. As such, it was filed within 30 days of the entry of the order disposing of the remaining claims and was timely. We also have jurisdiction over Appeal No. 2-20-0309. Having determined that we have jurisdiction over this appeal, we turn to one remaining preliminary matter before we reach plaintiffs' contentions on appeal.

¶ 24 B. Noncompliance with Supreme Court Rule 341

¶ 25 While defendants do not complain, we could not help but note that plaintiffs' statement of facts was replete with argument and comment. Specifically, plaintiffs broke their statement of facts into subsections A through J. In subsection E, plaintiffs' characterization of the enactment

and significance of the subdivision resolution treads upon the line between a fair factual presentation and improper argument. However, in subsections F through I, much like a batter erasing the back line of the batter's box, plaintiffs obliterate the line between fact and argument. In subsection F, entitled "The Payment Condition," plaintiffs argue, under the guise of fact, that the owner's $80,000 was late, citing to their complaint. Subsection G, entitled "The Subdivision Condition," continues in the argumentative vein, contending that there "are three separate and independent reasons why the Subdivision Condition was not satisfied," and then providing three arguments in support. In subsection H, entitled "The Grant of Easement Condition," plaintiffs argue that the easement condition was not satisfied resulting in the invalidation of the vacation ordinance. Subsection I is entitled "The Vacation Ordinance and Subdivision Resolution Created an Illegal Half-Street," which adequately suggests the gist of plaintiffs' argument on this point, and the balance of that subsection is devoted to arguing how a half street resulted from the operation of the vacation ordinance and the subdivision resolution.

¶ 26 Plaintiffs' extended discursion into argument instead of a fair presentation of facts is surprising, especially since plaintiffs do not bother to try to base their arguments on the proceedings below. Instead, rather than couching these extensive arguments as part of the historical arguments made before the trial court, plaintiffs simply present naked argument without the pretense that the subsections recapitulate their arguments before the trial court in support of their claims. This extended argument is wholly improper in the statement of facts and, where it hinders our review, the offending portions of the statement of facts are subject to being stricken. *Deutsche Bank Trust Co. Americas v. Sigler*, 2020 IL App (1st) 191006, ¶ 28. We do not find that plaintiffs' improper arguments within their statement of facts hinder our review because they can

easily be sequestered, and the historical facts can still be discerned. Accordingly, we will disregard all improper argument and comment in plaintiffs' statement of facts. *Id.* We note, however, that the Illinois Supreme Court Rules are not suggestions for counsel to follow where convenient and to ignore at counsel's whim; they have the force of law and must be followed. *Ittersagen v. Advocate Health & Hospitals Corp.*, 2021 IL 126507, ¶ 37. We admonish counsel to follow all the requirements of the supreme court rules in the future.

¶ 27 C. Vacation Ordinance and Public Interest

¶ 28 We now address plaintiffs' arguments on appeal. Plaintiffs first argue that the trial court erred by entering judgment on the pleadings on count I of their complaint because the vacation ordinance does not serve the public interest. The essence of plaintiffs' contention is that the owner is receiving significant benefits under the vacation ordinance and, therefore, the public interest cannot be served. To understand plaintiffs' contentions, we must examine both the procedural posture and the terms of section 11-91-1 of the Municipal Code (the vacation provision) (65 ILCS 5/11-91-1 (West 2020)), before we discuss the merits of plaintiffs' arguments.

¶ 29 The trial court granted judgment on the pleadings on count I of the third amended complaint which dealt specifically with the vacation ordinance. Any party may seasonably move for judgment on the pleadings pursuant to section 2-615(e) of the Code of Civil Procedure (Code) (735 ILCS 5/2-615(e) (West 2020)). A motion for judgment on the pleadings is similar to a motion for summary judgment, but it is limited to the pleadings. *Sweet Berry Café, Inc. v. Society Insurance, Inc.*, 2022 IL App (2d) 210088, ¶ 32. Judgment on the pleadings is properly granted only when the pleadings demonstrate no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law. *Id.* In considering such a motion, the court considers only

those facts apparent from the face of the pleadings, all matters subject to judicial notice, and any judicial admissions in the record. *Id.* The party moving for judgment on the pleadings concedes the truth of the well-pleaded facts in the nonmovant's pleadings. *Id.* The court considering the motion takes as true the well-pleaded facts and all inferences arising from those facts; the court disregards all conclusory allegations and surplusage, and it construes the evidence strictly against the moving party. *Id.* Finally, a trial court's judgment on a motion for judgment on the pleadings is reviewed *de novo*. *Id.*

¶ 30 Central to the vacation of the vacated land is section 11-91-1 of the Municipal Code. It provides, pertinently:

> "Whenever the corporate authorities of any municipality, whether incorporated by special act or under any general law, determine that the public interest will be subserved by vacating any street or alley, or part thereof, within their jurisdiction in any incorporated area, they may vacate that street or alley, or part thereof, by an ordinance. The ordinance shall provide the legal description or permanent index number of the particular parcel or parcels of property acquiring title to the vacated property. But this ordinance shall be passed by the affirmative vote of at least three-fourths of the alderpersons, trustees or commissioners then holding office. This vote shall be taken by ayes and noes and entered on the records of the corporate authorities.
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> The ordinance may provide that it shall not become effective until the owners of all property or the owner or owners of a particular parcel or parcels of property abutting upon the street or alley, or part thereof so vacated, shall pay compensation in an amount which,

> in the judgment of the corporate authorities, shall be the fair market value of the property acquired or of the benefits which will accrue to them by reason of that vacation, and if there are any public service facilities in such street or alley, or part thereof, the ordinance shall also reserve to the municipality or to the public utility, as the case may be, owning such facilities, such property, rights of way and easements as, in the judgment of the corporate authorities, are necessary or desirable for continuing public service by means of those facilities and for the maintenance, renewal and reconstruction thereof. If the ordinance provides that only the owner or owners of one particular parcel of abutting property shall make payment, then the owner or owners of the particular parcel shall acquire title to the entire vacated street or alley, or the part thereof vacated.
>
> The determination of the corporate authorities that the nature and extent of the public use or public interest to be subserved in such as to warrant the vacation of any street or alley, or part thereof, is conclusive, and the passage of such an ordinance is sufficient evidence of that determination, whether so recited in the ordinance or not. The relief to the public from further burden and responsibility of maintaining any street or alley, or part thereof, constitutes a public use or public interest authorizing the vacation." 65 ILCS 5/11-91-1 (West 2020).

¶ 31 Our consideration of the trial court's grant of judgment on the pleadings requires us to interpret section 11-91-1. The cardinal principle of statutory interpretation is to ascertain and give effect to the legislative intent. *Schultz v. St. Clair County*, 2022 IL 126856, ¶ 19. The best indication of the legislature's intent is the language of the statute given its plain and ordinary meaning. *Id.* If the statutory provision is clear and unambiguous, it shall be applied as written

without resort to other aids of construction. *Id.* Issues of statutory interpretation present questions of law, which we review *de novo*. *McHenry Township v. County of McHenry*, 2022 IL 127258, ¶ 55.

¶ 32 Plaintiffs argue that, for purposes of the trial court's grant of judgment on the pleadings in favor of defendants, they have presented a genuine issue of material fact regarding whether the vacation ordinance served the public interest. We disagree.

¶ 33 Plaintiffs' argument boils down to the idea that the vacation was done to advance the owner's purely private interests, and any benefits to the public interest are, at most, incidental. The Village's motives in passing the ordinance are immaterial; the correct issue is simply whether the action was within the Village's power. *Chicago National Bank v. City of Chicago Heights*, 14 Ill. 2d 135, 143 (1958). Here, the Village enacted the vacation ordinance for several reasons: to settle the ongoing litigation between the owner and the Village, to dispense with the burden of underused and unimproved land, thereby saving the public fisc from continuing to maintain that underused and unimproved land, and to allow the productive development of the subject property. In addition, the Village considered that the remainder of the Luthin Road right-of-way, comprising a width of 64 feet, would remain sufficient for the Village's and the public's needs, and it considered the fact that the owner had agreed to grant certain easements in favor of the Village for access, drainage, utilities, and construction—in other words, the easements would allow the continued usage of the vacated land by the public, but the public would no longer be required to maintain it, and the land could be more productively used and developed. In addition, we note that the vacation provision expressly states that the passage of a vacation ordinance demonstrates that the municipality has considered the public interests involved and determined that the vacation

serves those interest; the vacation provision further provides that the municipality's relief from the burden of maintaining the vacated land constitutes a sufficient demonstration of the benefit to the public interest so as to justify the vacation ordinance. 65 ILCS 5/11-91-1 (West 2020). These considerations, independently and together, demonstrate that the vacation ordinance serves the public interest.

¶ 34 Plaintiffs, for their part, begin their argument with the conclusion that the vacated land falls under the public trust doctrine. The public trust doctrine holds that certain types of property, such as navigable waters, are held in trust by the State for the benefit of the public. *Wade v. Kramer*, 121 Ill. App. 3d 377, 379 (1984). Plaintiffs do not allege, however, that the State deeded the Luthin Road right-of-way to the Village, and this serves to distinguish this case from those relied upon by plaintiffs. See *Paepcke v. Public Building Comm'n of Chicago*, 46 Ill. 2d 330 (1970) (State-deeded public park); *People ex rel. Scott v. Chicago Park District*, 66 Ill. 2d 65 (1976) (State control over lake fill in Lake Michigan); *Lake Michigan Federation v. U.S. Army Corp of Engineers*, 742 F. Supp. 441 (N.D. Ill. 1990) (State control over lake fill in Lake Michigan). Moreover, *Paepcke* contradicts plaintiffs' position. In that case, our supreme court considered whether municipal bodies could improve legislatively created public parks with public school buildings. *Paepcke*, 46 Ill. 2d at 331-32. *Paepcke* expressly held that lands held in trust for the public may be ceded if the municipality follows statutory authority to effect its plan. *Id.* at 342-43. Here, the Village vacated the vacated land pursuant to section 11-91-1 of the Municipal Code. Thus, pursuant to the public-trust cases cited by plaintiffs, the vacation of the land is authorized by statute and plaintiffs do not contend that the Village did not follow section 11-91-1 of the Municipal Code in accomplishing the vacation. Accordingly, we reject plaintiffs' invocation of the public trust doctrine.

¶ 35 Next, plaintiffs contend that the vacation ordinance does not actually serve the public interest and the trial court improperly curtailed its review when it determined that the vacation ordinance was conclusive and explained the public benefits accruing from it. We agree with plaintiffs that a trial court may review a vacation of a street "to see if any public use or interest is subserved" by vacating the street. *Ray v. City of Chicago*, 19 Ill. 2d 593, 598 (1960). *Ray* states the rule pertaining to judicial review as being limited to determining whether the vacation is for a "purely private purpose;" "if there is any substantial showing that the public interest will be served by vacating the street, the ordinance is within the power of the city council, no matter how much private parties may be benefited thereby." *Id.* at 598-99. Here, in addition to the recitations of the public benefits within the vacation ordinance itself, the vacation ordinance was enacted to settle ongoing litigation between the Village and the owner. This is a clear public purpose and benefit: the Village avoids the expense and uncertainty of the litigation and the potential burden to the public of an adverse result. See *Ballweg v. City of Springfield*, 114 Ill. 2d 107, 122 (1986) (public policy favors settlement of legal disputes). Thus, we reject plaintiffs' contention that the vacation ordinance worked a purely private benefit to the owner with no benefit to the public.

¶ 36 Plaintiffs highlight the vacation ordinance's recitations in arguing that there is a factual issue that should preclude the grant of judgment on the pleadings regarding the vacation ordinance. Specifically, the vacation ordinance recites that the owner requested the vacated land to be able "to petition the village for the subdivision of the [subject property] from the existing one (1) lot into two (2) lots which conform to the minimum lot size requirement of the R-2 Single Family Detached Residential District." According to plaintiffs, this recitation reveals the "real purpose" of the vacation ordinance "to enable [the owner] to realize a greater profit" by subdividing the

subject property into two conforming lots as of right. This claim, however, ignores the other recitations and the manifest public purpose and benefit discussed above. That the private entity will benefit is both contemplated by section 11-91-1 and allowed if section 11-91-1 is followed. See *Ray*, 19 Ill. 2d at 598-99 ("if there is any substantial showing that the public interest will be served by vacating the street, the ordinance is within the power of the city council, no matter how much private parties may be benefited thereby"). Accordingly, plaintiffs' contention fails.

¶ 37 Plaintiffs also contend that there are adverse consequences, such as the adverse impact on plaintiffs' private pond. This is more in the nature of a private nuisance claim and the purely private grievance between two private parties cannot be accounted when considering whether the vacation furthers the public interest. Notwithstanding their purely private concerns over the impact on their private property, plaintiffs conclusorily allege that the vacation of the portion of the Luthin Road right-of-way is contrary to the Village's comprehensive plan and other details embodied in the Village's codes and ordinances. Because these arguments are based on conclusory allegations, we are not bound to accept them as true; rather, we must disregard them when considering whether judgment on the pleadings was properly granted. *Sweet Berry Café*, 2022 IL App (2d) 210088, ¶ 32 (the court considering a motion for judgment on the pleadings disregards all conclusory allegations and surplusage). Accordingly, we reject these contentions.

¶ 38 Plaintiffs also contend that the trial court's consideration of the vacation ordinance was backwards: the court determined that the ordinance did not adversely affect the public interest instead of determining whether the public interest was served by the vacation ordinance. As always, we review the trial court's judgment, not its rationale. *City of Chicago v. Holland*, 206 Ill. 2d 480, 491-92 (2003). Our plenary review of the vacation ordinance reveals that it serves the

public interest. That the public interest is also not adversely affected would seem to be more in the nature of the cherry on top rather than a reason to invalidate the court's judgment. Accordingly, we reject plaintiffs' contention regarding how the court went about its analysis.

¶ 39 Finally, plaintiffs' extensive reliance on *Ray* is unavailing. As we have noted, *Ray* may be invoked to overturn a vacation ordinance where the benefit is purely private; where there is substantial public benefit, the ordinance will be deemed valid no matter the how much a private entity may benefit. *Ray*, 19 Ill. 2d at 598-99. Moreover, in *Ray*, there was evidence that the vacated street and alley was an important thoroughfare for over 100 years, that vehicular and pedestrian traffic was increasing, that the parking situation was deteriorating in the vicinity, and that the fair market value of the street and alley to be vacated was over $200,000, but the city was to receive only $100 as compensation for the vacated street and alley. Here, by contrast, Luthin Road is a dead-end street, and, in any event, the Village secured easements for access and travel over portions of the vacated land, thus preserving the functionality of the vacated land to the public for its original and intended purposes. Accordingly, *Ray*, along with expressly permitting vacation in the presence of the furtherance of the public interest, is also factually distinct and provides little guidance under the facts and circumstances alleged in this matter.

¶ 40 D. Compensation for the Vacated Land

¶ 41 Plaintiffs next argue that the compensation for the vacated land was insufficient. Plaintiffs argue that they offered $120,000 for the vacated land, and that offer was based on the price per square foot for which the owner purchased the subject property applied to the area of the vacated land. The Village received only $80,000 for the vacated land, so the compensation was plainly insufficient. In support, plaintiffs contend that section 11-91-1 mandates that, if compensation is

part of the vacation arrangement, then that compensation must be the fair market value of the vacated property.

¶ 42 Section 11-91-1 provides, pertinently, that, if the vacation ordinance is conditioned on the payment of compensation by an abutting owner, the owner "shall pay compensation in an amount which, in the judgment of the corporate authorities, *shall* be the fair market value of the property acquired." (Emphasis added.) 65 ILCS 5/11-91-1 (West 2020). Plaintiffs interpret this passage to mean that the compensation shall be the fair market value of the property being vacated. However, plaintiffs' reading deprives the phrase, "in the judgment of the corporate authorities" of meaning, and this is prohibited. *Schultz*, 2022 IL 126856, ¶ 19 (in construing a statute, no word or provision should be rendered meaningless). In our view, if compensation is required as part of the vacation transaction, the compensation paid shall be the fair market value of the vacated property, according to the judgment of the corporate authorities. Moreover, if plaintiffs' interpretation were correct, then the provision would only need to read that the abutting owner shall pay compensation in an amount which shall be the fair market value. The inclusion of "in the judgment of the corporate authorities" must be given meaning, and that requires the judgment of the corporate authorities be exercised in determining the fair market value of the property being vacated. Thus, we reject plaintiffs' contention.

¶ 43 Even if we countenance plaintiffs' suggestion that the fair market value of the vacated land were $120,000 (presumably by operation of the Girgises' offer), the amount specified in the vacation ordinance, along with the easements preserving the public's use and access to Luthin Road at that point is not so insubstantial as to be a token payment, like that prohibited in *Ray*. *Ray*, 19 Ill. 2d at 600 (benefits to private landowner over $200,000; required payment only $100).

Moreover, we note that the Girgises' properties do not abut the vacated land which would render it landlocked and useless were the Girgises to purchase the vacated land. In addition, the Girgises did not offer the Village easements to allow the public's continued access and use of the vacated land. Thus, in light of section 11-91-1, the judgment of the Village fixed the fair market value at $80,000 plus the easements allowing the public continued access and use, and plaintiffs' allegations do not demonstrate that the money and easements exchanged are so grossly below the fair market value as to run afoul of section 11-91-1 or *Ray*. Accordingly, we reject plaintiffs' argument. For the foregoing reasons, we hold that the trial court correctly granted judgment on the pleadings in favor of defendants on count I regarding the vacation ordinance.

¶ 44 E. Creation of a Half Street

¶ 45 Plaintiffs next argue that the "Vacation Ordinance and the Subdivision Resolution resulted in a street that is less than 66 feet wide, which is prohibited by the Village Code." According to plaintiffs, the vacation ordinance reduced the width of Luthin Road to 64 feet, rendering it noncompliant with the Subdivision Regulations of Oak Brook, Illinois (subdivision code) (Oak Brook Village Code § 14-1-1 *et seq.* (eff. Dec. 10, 2002)). We disagree that the vacation ordinance runs afoul of the Village's subdivision code.

¶ 46 As an initial matter, the interpretation of an ordinance proceeds in the same manner as the interpretation of a statute: the court must ascertain and give effect to the intent of the drafters. *Jaros v. Village of Downers Grove*, 2017 IL App (2d) 170758, ¶ 21. Under the subdivision code, a "subdivision" is defined as the "division of any tract or parcel of land into two (2) or more lots or parcels, or consolidation of two (2) or more parcels, or any division of land when a new street or easement for access is involved." Oak Brook Village Code §14-2-2 (eff. Dec. 10, 2002). The

vacation ordinance vacated a portion of the Luthin Road right-of-way, and, upon the satisfaction of the enumerated conditions in the vacation ordinance, title would vest with the owner. Thus, the vacation ordinance did not work a "division of any tract or parcel of land," a "consolidation of two (2) or more parcels," "or any division of land when a new street or easement for access [was] involved." *Id.* Accordingly, the vacation ordinance did not create a subdivision and the subdivision code is inapplicable to the vacation ordinance.

¶ 47 Similarly, under the subdivision code, a "half street" is defined as a "street where less than the ultimate total required right-of-way width has been dedicated along one or more exterior property lines of a subdivision." *Id.* The vacation ordinance reduced the width of the Luthin Road right-of-way to less than that required under section 14-6-3(A) of the subdivision code (*id.* § 14-6-3(A)), but it did not dedicate or rededicate the existing Luthin Road right-of-way, and the reduced width did not run along an exterior line of a subdivision, because there was as yet no subdivision that occurred. Thus, under the definition, the vacation ordinance did not create a half street.

¶ 48 The subdivision code also provides that:

> "[h]alf streets shall be prohibited except where essential to the reasonable development of the subdivision in conformity with the other requirements of these regulations and where the village board finds it will be practicable to require the dedication of the other half when the adjoining property is subdivided.
>
> Wherever an existing or dedicated half street is adjacent to a tract being subdivided, the other half of the street shall be platted within such tract." *Id.* § 14-6-3(A)(2)(a).

Plaintiffs do not provide any argument concerning the subdivision resolution on its own. Instead, plaintiffs combine and conflate the vacation ordinance and the subdivision resolution into some sort of unified and undifferentiated whole. It is true that the vacation ordinance contemplated that the owner would subdivide the subject property once title to the vacated land had vested, but the vacation ordinance did not accomplish the actual subdivision. Likewise, the subdivision resolution accepted the owner's subdivision (as defined in the subdivision code, the division of a two-acre parcel into two one-acre parcels), but it did not accomplish the vacation or the transfer and vesting of title of the vacated land in the owner which was a condition precedent to the subdivision. Thus, the two provisions, the vacation ordinance and the subdivision resolution, while each referring to the other, are independent parts and must be considered independently. Because plaintiffs have provided no specific argument regarding the subdivision resolution *qua* subdivision resolution, they have forfeited such consideration on appeal. Ill. S. Ct. R. 341(h)(7) (eff. Oct. 1, 2020) ("points not argued are forfeited").

¶ 49 Forfeiture notwithstanding, plaintiffs' primary complaint regarding the subdivision resolution is that it granted a variance under section 14-6-3(A)(2) of the subdivision code without the necessary findings, thereby ignoring the subdivision code or *de facto* amending it. As noted, section 14-6-3(A)(2)(a) prohibits half streets, but that prohibition is within the context of the subdivision code. The subdivision resolution at issue here did not create a half street. Rather, the tract being subdivided was adjacent to an existing half street. Section 14-6-3(A)(2)(a) thus required that "the other half of the street shall be platted within such tract." Plaintiffs do not complain that this requirement was not followed. The other requirements of section 14-6-3(A)(2)(a) are inapplicable. The half street preexisted the subdivision, so the subdivision

resolution did not create the diminished-width Luthin Road right-of-way. Likewise, the adjoining properties were already platted and existing, those properties do not appear to have been of sufficient size to allow subdivision, and Luthin Road was already dedicated and in existence, so it could not have been practicable "to require the dedication of the other half when the adjoining property is subdivided." Accordingly, the subdivision resolution does not run afoul of the subdivision code. Because neither the vacation ordinance nor the subdivision resolution failed to comply with the requisites of the subdivision code, plaintiffs' arguments fail.

¶ 50 Plaintiffs also complain that the grant of the variance to section 14-6-3(A)(2) of the subdivision code was improper. Our analysis has determined that a variance from the subdivision code regarding half streets was not necessary. Because a variance was not necessary, the grant of a variance to that section must be surplusage, or it must grant relief from the unobtainable conditions of platting with the tract (if that was not followed) or of the requirement of dedicating the other half of an already dedicated and existing street. Regardless, the grant of variance does not render either the vacation ordinance or the subdivision resolution improper.

¶ 51 Plaintiffs also attack the lack of findings accompanying the grant of the variance. Because the variance was not required, even if we invalidate the grant of variance for failure to make the required findings, the outcome remains undisturbed, because no variance was needed, and the subdivision resolution expressly stated that any invalidity of a provision did not affect the validity of the remaining provisions in the subdivision resolution. Because plaintiffs have not challenged the subdivision resolution as a whole (or on its own terms), but only the grant of variance to section 14-6-3(A)(2), such invalidity does not affect the validity of the remainder, and the subdivision

remains proper (more to the point, because there is no variance required, invalidating the grant of variance is little more than an illusory action to no effect).

¶ 52 To the extent that plaintiffs intend their contentions on appeal regarding the illegal half street to be applied to the grant of judgment on the pleadings on count II, which specifically concerns the subdivision resolution, we find no error in the trial court's judgment. For the reasons stated, the subdivision resolution did not violate the subdivision code. Count II also ascribed the invalidity of the subdivision resolution to the failure of the vacation ordinance. Because we have held above that the vacation ordinance passed muster, this reason fails on appeal. Accordingly, we hold that the trial court properly granted judgment on the pleadings on count II regarding the subdivision ordinance.

¶ 53 F. Count III and the Automatic Nullification of the Vacation Ordinance

¶ 54 In count III of the third amended complaint, plaintiffs alleged that the three conditions in the vacation ordinance were not timely fulfilled, resulting in the nullification of the vacation ordinance by operation of its own terms. If the vacation ordinance was nullified, then the subdivision resolution was likewise nullified, because without the vacated land, the subject property could not be subdivided as set forth in the subdivision resolution. Defendants moved to dismiss count III pursuant to section 2-619.1 of the Code (735 ILCS 5/2-619.1 (West 2020) (providing that combined or hybrid motions to dismiss pursuant to sections 2-615 (*id.* § 2-615 and 2-619 (*id.* § 2-619) may be brought together in a single motion despite the different legal bases) and, as is pertinent here, specifically argued that plaintiffs lacked standing to pursue their claims in count III.

¶ 55 Lack of standing is an affirmative matter susceptible to resolution via a motion to dismiss pursuant to section 2-619(a)(9) of the Code (*id.* § 2-619(a)(9)). *Muirhead Hui L.L.C. v. Forest Preserve District of Kane County*, 2018 IL App (2d) 170835, ¶ 21. We review *de novo* the trial court's judgment granting a motion to dismiss under section 2-619 of the Code.

¶ 56 Standing precludes disinterested persons to a controversy from suing on that controversy. *Id.* ¶ 22. At the most basic level, standing requires an injury in fact to a legally cognizable interest. *Id.* In the context of a declaratory judgment, there must be an actual controversy between adverse parties, and the party requesting the declaration of rights must possess some personal claim, status, or right that is capable of being affected by the grant of relief. *Id.*

¶ 57 Below and before this court, defendants argued that plaintiffs lacked standing to challenge the subdivision resolution or the vacation ordinance as property owners who reside nearby the subject property. On appeal, plaintiffs cite only boilerplate authority describing standing, much as we did in the preceding paragraph. Plaintiffs do not identify any rights or interests that would be affected by any relief the trial court could grant.[2] Plaintiffs also do not present any pertinent authority to explain how they, as property owners of nearby property, but not the affected subject property, have an interest in the disposition of the subject property. Because plaintiffs do not cite

[2] We note that, above, we summarized potential private actions that were conclusorily alleged. Under a motion to dismiss pursuant to section 2-619, we accept as true only the well-pleaded allegations. *Patrick Engineering, Inc. v. City of Naperville*, 2012 IL 113148, ¶ 31. Conclusory allegations are not well-pleaded, and, as with a judgment on the pleadings, we may disregard them. *Id.*

pertinent authority, only vague boilerplate, we hold that plaintiffs have forfeited their arguments on appeal regarding count III. *Gakuba v. Kurtz*, 2015 IL App (2d) 140252, ¶ 19.

¶ 58 Forfeiture notwithstanding, plaintiffs assert that the vacation ordinance was passed to permit the owner to build two homes instead of one. This contention misses the boat. While we agree that one of the effects of the vacation ordinance is to allow the subject property to be subdivided into two, conforming, buildable lots, we have discussed above that the relevant question is whether the vacation serves the public interest. If it does, then private benefit, like the ability to divide the property into two, conforming, buildable lots, is incidental. Plaintiffs attempt to insinuate that vacation ordinance was the culmination of some sort of corrupt deal to benefit the owner despite the objective facts that the vacation ordinance was part of a compromise and settlement of ongoing litigation, and that the public retained access rights through easement to be able to utilize Luthin Road unabated and as intended. An allegation of public corruption would be one thing, but here, we have only the insinuation in plaintiffs' arguments on appeal. This insinuation does not support plaintiffs' standing.

¶ 59 Plaintiffs also contend that standing derives from the subdivision's noncompliance with storm water management regulations or the Village's comprehensive plans. However, there appear no plans for the development of the subject property in the record and plaintiffs' claims are speculative and hypothetical. Such speculation and hypothesizing do not support plaintiffs' standing, because there is nothing concrete, and it is not clear if the development of the subject property would even invade plaintiffs' rights so as to support an action in the future. Similarly, plaintiffs contend that the development may change the drainage of surface waters due to the future development of subdivision. We stress that, at this point, the property has been divided only on

paper and there is no indication that any requests to approve improvements to the new subdivision have been made. In short, plaintiffs have demonstrated neither actual injury nor a legally cognizable interest that can be protected. Plaintiffs prove our point in their reply, stating that, as neighbors, they should have standing to challenge the inevitably forthcoming zoning dispute based on the owner's imminent development of the subject property. Again, plaintiffs' assertion of injury occurs in the insubstantial and unrealized future, not in the here-and-now. We will not proscribe conduct that has not yet and may not ever come to pass.

¶ 60 Finally, plaintiffs resort to the last bastion of the truly desperate: logic. Plaintiffs argue that "[i]t is illogical to think that Plaintiffs have standing to challenge zoning that enables the construction of two houses on the subject property, but do not have standing to challenge a street vacation enabling subdivision of that same property thereby making possible the construction of two houses on the subject property." Plaintiffs lack standing to mount a zoning challenge precisely because there is, as yet, no controversy to have arisen. Rather than illogical, it is definitional that plaintiffs lack standing either to mount a challenge to future conduct or to the vacation ordinance because their rights have not been invaded. Accordingly, we hold that the trial court correctly dismissed count III due to plaintiffs' lack of standing.

¶ 61 Because we have determined that plaintiffs lack standing to pursue count III, we need not consider their remaining contentions on appeal.[3]

[3] While the standing challenge could conceivably have been applied to counts I and II, because standing is an affirmative defense, it is forfeited with respect to counts I and II because defendants did not raise it.

¶ 62 III. CONCLUSION

¶ 63 For the foregoing reasons, the judgment of the circuit court of Du Page County is affirmed.

¶ 64 Affirmed.