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Karlen's Korner Special Edition

A Bleachers Story

By Douglas M. Karlen
Vice President and Regional Counsel
Chicago Title Insurance Company

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If at first you don't succeed (in the courts), try, try again (in the legislature). This is the story of the Crystal Lake South bleachers. The question decided in this story is: do municipal zoning ordinances govern a school district's construction of football stadium bleachers on school property? The courts said "yes;" the General Assembly subsequently said "yes, but . . ."

The campus of the Crystal Lake South High School occupies land that adjoins residential properties in the home rule city of Crystal Lake. The residences and the campus are zoned R-2 Single Family Residences. The school constitutes a nonconforming use permitted to continue under Crystal Lake's zoning ordinances.

In 2013, the Board of Education that operates the high school decided to replace the bleachers at the football stadium. The Board's plan placed the new home bleachers adjacent to the neighboring residential properties and called for the new bleachers to be larger, higher, and closer to the residences than the existing bleachers. The Board obtained approval and a building permit from the McHenry County Regional Superintendant of Schools and began work on the project without notifying Crystal Lake or seeking a building permit or zoning approval. Crystal Lake ordered the Board to stop construction until it obtained a special use permit and zoning variances. The Board ignored the order and completed the bleachers project.

Several adjoining owners filed suit, seeking private enforcement of the City's zoning ordinances. See 65 ILCS 5/11-13-15. The Board filed a third-party complaint against the City, seeking a declaration that the City does not have authority over the Board to enforce its zoning ordinances. In the third-party case, the circuit court granted summary judgment to the City. The appellate court affirmed. See 2014 IL App. (2d) 140098. The Illinois Supreme Court allowed the Board's petition for leave to appeal.

In a unanimous decision filed September 24, 2015, the Illinois Supreme Court affirmed the circuit court and appellate court orders, ruling that a school district is subject to, and its school board must comply with, local governmental zoning restrictions. See Gurba v. Community High School District No. 155, 2015 IL 118332. (The neighbors' complaint remained pending at the time the Court ruled on the Board's third-party complaint.)

The Supreme Court reasoned as follows:

1. It is within the province of local governmental bodies to determine the use of land and to establish zoning

classifications; the General Assembly has chosen to exempt certain entities from municipal zoning regulations, but school districts and school property are not among the exemptions.

2. The Illinois Constitution vests broad powers in home rule municipalities to perform any function pertaining to their government and affairs; land use regulations, including zoing ordinances, clearly pertain to local affairs.

3. The General Assembly may pre-empt home rule powers by specifically enacting a law requiring exclusive exercise of a power by the State; no statute pre-empts or limits home rule zoning power over public school districts.

4. Although the State has exclusive constitutional power to regulate the public education system, there is nothing in the School Code exempting school property from local zoning regulations; in fact, the Code authorizes a school board to "seek zoning changes, variations, or special uses for property held or controlled by a school district." 105 ILCS 5/10-22.13a.

For good measure, the Court appended "before and after" pictures showing the view of the bleachers from the neighboring yards. In the end, the Supreme Court affirmed the lower court orders requiring the Board to tear down the bleachers and submit to the zoning or re-zoning process.

The legislature reacted quickly to the bleachers case. Senate Bill 2186 was introduced on October 20, 2015. After various amendments urged by advocacy groups representing the education community, Senate Bill 2186 makes the following two changes to local government and school district law:

First, it amends Section 10-22.13a of the School Code by adding the following statement immediately after the quoted material shown above at Number 4:

> A school district is subject to and its school board must comply with any valid local government zoning ordinance or resolution that applies where the pertinent part of the building, structure, or site owned by the school district is located.

Thus, the legislature recognizes and confirms (unnecessarily?) the ruling by the Illinois Supreme Court. Further, Senate Bill 2186 adds language that this amendment to the School Code is declarative of existing law. The legislature usually employs this language when it intends to contradict or negate the consequences of a judicial opinion—and not, as in this case, to support a judicial opinion. Whether this language was necessary is open to question, but it does emphasize that school districts are, indeed, subject to local zoning regulations.

Second, Senate Bill 2186 makes identical amendments to the Counties Code, the Township Code, and the Illinois Municipal Code to ease a school district's burden when it does submit plans to local zoning authorities. These amendments begin with a broad statement of a standard of care. In exercising zoning powers

> with respect to public school districts, a [county, township, municipality] shall act in a reasonable manner that neither regulates educational activities, such as school

curricula, administration, and staffing, nor frustrates a school district's statutory duties.

This language, too, is declarative of existing law—stating a proposition not addressed in the Gurba case.

More specifically, the amendments compel local governments to take the following actions when processing zoning applications from public school districts:

- Make reasonable efforts to streamline the zoning approval and review process;
- Minimize the administrative burdens involved in the zoning review process, including, but not limited to;
- Reducing application fees and other costs to the greatest extent practicable and reflective of actual cost, but in no event more than the lowest customary fees;
- Limit the number of times the school district must amend its site plans;
- Reduce the number of copies of site plans and other documents required to be submitted by the school district; and
- Expedite the zoning review process so that a decision is rendered within 90 days after a school district submits a completed application.

Senate Bill 2186, as amended, passed both houses of the General Assembly on May 31, 2016, and Governor Rauner signed it into law on August 25, 2016, as Public Act 99-890, effective August 25, 2016. See new 55 ILCS 5/5-12021 (Counties Code); amended 60 ILCS 1/110-70) Township Code); new 65 ILCS 5/11-13-27 (Illinois Municipal Code); and amended 105 ILCS 5/10-22.13a (School Code).

In conclusion, the education community admits it must submit to local zoning procedures, but the local zoning authority must ease the costs and burdens of compliance for school districts. It is hoped that this legislative balance struck by Public Act 99-890 will prevent future controversies such as the Crystal Lake South bleachers case. In any event, attorneys representing school districts contemplating construction projects must take into account the size, height, and location of buildings, setbacks from property lines, and the due process rights of neighboring property owners. In other words, they must consider local zoning regulations. School districts must submit to the way, but the way should be made easier for them.

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