

## In the Zone

### Current Trends in Land Use Law

*Fall, 2016*

Welcome to **Ancel Glink's *In the Zone***. Our e-newsletter includes articles on lively land use topics designed to inform local government officials about current trends in land use law and provide useful resources to promote planning and zoning practice throughout the state.

***In the Zone*** is a publication of Ancel Glink's Zoning and Land Use Group. For more than 80 years, Ancel Glink has counseled municipalities and private clients in zoning, land use, and other municipal matters.

### **Fantastic Fall Events**

#### **[Illinois Municipal League Conference - Chicago, Illinois](#)**

September 22, 2016

#### **"Sharing with Care: Regulations for Responsible Short-Term Rentals"**

David S. Silverman and Daniel J. Bolin

Short-term rental services, like Airbnb and VRBO, have exploded in popularity, and local governments are moving swiftly to harness their economic potential, while reducing their negative effects on surrounding property owners. Participants will evaluate the need for short-term rental regulations, and the legal issues local governments encounter with these innovative land uses. After reviewing regulations from around the country, participants will discuss the development of appropriate regulations for their communities, and the various enforcement mechanisms available to ensure the responsible operation of short-term rentals.

#### **[APA-IL State Conference - Chicago, Illinois](#)**

September 28-29, 2016

#### **"Planners, Ethics and Social Media"**

Julie Tappendorf

Planners are Facebooking, Tweeting, Instagramming, and Snapchatting in increasing numbers, both at work and away from

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the workplace. Julie will discuss how to identify and navigate the legal and ethical issues that arise in use of social media by planners and the type of social media activities that can subject you to discipline and even termination through real-life examples of social media conduct both on and off the clock. She will also give specific examples of how social media activities interact with the planning code of ethics. Finally, the session will discuss the importance of creating and implementing a social media policy.

### **"The Real Houselawyers of Planning"**

David S. Silverman, Gregory W. Jones, and Daniel J. Bolin  
Moderator: Trevor Dick, City of Naperville

It's a Real Houselawyers reunion with the fabulous attorneys of Ancel Glink! Host Andy Cohen confronts David Silverman, Greg Jones, and Dan Bolin about all the drama with short-term rentals, fair housing, takings, signs, content-based regulations, and the hottest litigation and legislation in land use. Fans are invited to ask questions about these fashionable planning topics during this special live episode, full of gripping conversation, laughter, tears, and more than a few surprising moments. Mazel!

### **"Plan Commissioner Training Workshop"**

David S. Silverman and Gregory W. Jones

Ancel Glink attorneys David Silverman and Greg Jones will conduct a plan commissioner training workshop focusing on the laws and ethical rules applicable to planning and zoning boards. This interactive workshop includes factual scenarios that can - and do - arise during local zoning deliberations, including conflicts of interest, Illinois' gift ban act, and others.

David and Greg will also present this workshop in Rantoul, Illinois on October 26 and Itasca, Illinois on November 2.

### **Kane County States' Attorney Civil Law Conference -**

**Geneva, Illinois**

September 30, 2016

### **"LULU's, NIMBY's and Controversial Land Uses"**

Julie Tappendorf

How do you legally regulate controversial land uses such as adult businesses, short term rentals, medical marijuana, urban agriculture, and drones? What is a LULU? What is NIMBY? Julie will discuss these questions, examine the legal standards applicable to land use regulations, and provide some strategies for managing the "not in my back yard" response to locally undesirable land uses.

### **Don't Fear the Walking Dead (Buildings):** **Land Banking as a Tool to Address Zombie Properties** **in Illinois**

Years after its apex, the effects of the housing crisis are still being felt in municipalities throughout Illinois. Abandoned and blighted properties continue to weigh on communities, stifling growth, dissuading development, and creating safe spaces for illegal activity. Among the most challenging are "zombie properties," properties for which a foreclosure action has been filed but remains unresolved for years after filing, and other properties stuck in market limbo. Fortunately, thoughtful, strategic government intervention can turn around problem properties, and today, with the development of new strategies, like land banking, local governments have a variety of tools for doing so.

The cycle of vacancy and blight, magnified by the Great Recession and foreclosure crisis, continues to frustrate both government and private efforts to stabilize and reinvest in hard hit communities. By the time many vacant properties could be resold, the property value no longer supports such reinvestment. Zombie properties present a particularly difficult challenge for local governments. Not only are they often abandoned, but it can be unclear to property owners, and even lending institutions, who has control over - and responsibility for - a property during foreclosure proceedings. Thus, zombie properties continue to deteriorate as foreclosure proceedings linger. Adding to the challenge, many of these properties are poor candidates for redevelopment because conditions that often accompany abandoned properties, such as delinquent taxes, make them unattractive to the foreclosing lender and developers. As long as those taxes and liens outweigh the value of the property, the land will sit vacant, affecting the surrounding area.

But recent developments in Illinois, like the emergence of land banking as a revitalization strategy, can help local governments intervene and meet these challenges. Though relatively new to Illinois, regional land banks - generally established through partnerships among local governments in a region of the State - can utilize local government authority to implement a host of strategies for addressing obstacles to redevelopment, including property tax abatement, abandonment proceedings, note acquisitions, deeds in lieu of foreclosure, assignments of foreclosure judgments, and aggregation of land for future development. Ultimately, regional land banks can help put vacant and blighted properties back on the track to productive use. Even working on their own, local governments have the authority to employ certain tactical land banking strategies that can alleviate abandonment and blight in their communities.

Whether as part of a fully-realized regional land bank, or utilizing land banking strategies for targeted local redevelopment, local governments now can take advantage of land banking strategies to repurpose vacant buildings. At the forefront of land banking in Illinois, Ancel Glink can help your local government use these emerging tools to tackle your most difficult redevelopment challenges. Contact us to find out how we may be able to help.

## **Gurba and Beyond:**

### **New Zoning Procedures for School Districts**

In a previous edition of *In the Zone*, we reported on the case of *Gurba v. Community High School District No. 115*, 2015 IL 118332 ("Gurba"), decided on September 24, 2015. In *Gurba*, the Illinois Supreme Court held that public school districts are required to follow local zoning laws.

In the wake of *Gurba*, legislation was introduced into the Illinois General Assembly to amend the School Code to clarify that school districts are in fact subject local zoning regulations. However, the initial bill was subsequently amended to include provisions that streamline the zoning process when an application is submitted by a school district. This amended version, Public Act 099-0890 ("P.A. 99-890"), was signed into law by Governor Rauner on August 25, 2016. Although ensuring that public schools are able to move through the zoning process in an expeditious manner is a laudable goal, P.A. 99-890 may create difficulties for local zoning authorities.

First, P.A. 99-890 confirms that local zoning authorities may not regulate educational activities such as school curricula, administration, and staffing, nor may they impose a regulation that "frustrates a school district's statutory duties." The *Gurba* decision specifically cited school curricula, administration, and staffing as matters relating to the constitutionally mandated statewide public educational system, over which the General Assembly has a plenary power. However, P.A. 99-890 leaves some ambiguity as to when a zoning ordinance may impermissibly regulate education activities or frustrate a school district's statutory duties.

Second, the law imposes new requirements upon municipalities, counties, and townships, the three units of local government with zoning authority in Illinois. These new regulations go well beyond the holding in *Gurba* by creating a new set of requirements that local zoning authorities must follow when processing a zoning application from a public school district.

Under P.A. 99-890, local zoning authorities must "make reasonable efforts to streamline the zoning application review process" for a school district. However, what constitutes "reasonable efforts" is not defined. This vagueness opens the door for disputes between local zoning authorities and school districts, as it is possible that they will have very different ideas of what "reasonable efforts" are required by this new law.

P.A. 99-890 also requires local zoning authorities to "minimize the administrative burdens involved in the zoning review process" for school districts, including the following:

- \* Reducing application fees and costs associated with the school zoning application to the greatest extent practicable and reflective

of actual cost, but in no event more than the lowest fees customarily imposed by the local zoning authority.

- \* Limiting the number of times the school district must amend its site plans.

- \* Reducing the number of copies of site plans and any other documents required to be submitted by the municipality.

- \* Expediting the zoning review process for the purpose of rendering a decision on any application from a school district within 90 days after a completed application is submitted.

The questions raised by these new requirements are many. May a school district now contest the application fees and costs imposed by local zoning authority? How many site plan revisions are too many? What if a school district continues to submit site plans with inaccurate drawings or information? How many copies of plans must a school district submit? Enough for the hearing body and the corporate authorities? P.A. 99-890 does not provide these answers.

The most problematic provision of P.A. 99-890 is likely the requirement that a local zoning authority render a decision on a school district's zoning application within 90 days. This provision will now make the determination of when a school district's application is "complete" quite important, and could lead to disputes with a school district over the question of whether an application is complete or not for the purposes of this 90 day approval period. This provision also begs the question of whether a local zoning authority must defer other applicants who were ahead of a school district in order to meet the 90 day deadline, which may impact the due process rights of those other applicants.

P.A. 99-890 also does not address the possibility that a local zoning authority may fail to render a decision on a school district's application within 90 days. Does the school district have a remedy to contest such a delay?

In addition to the procedural problems that local zoning authorities may face under P.A. 99-890, the law brings up certain substantive questions as well. The law only applies to zoning applications submitted by a public school district. However, there are other units of government subject to local zoning laws. Community college districts and park districts both provide important services to the public, yet they are not entitled to any special consideration when applying for local zoning approvals. P.A. 99-890 may also raise constitutional concerns due to the fact that the law treats public schools differently than private schools, as public schools will now have certain advantages over private schools when applying for zoning approvals. Additionally, P.A. 99-890 does not contain an express denial and preemption of home rule powers, raising the question of whether a home rule unit may enact an ordinance that directly conflicts with these new provisions.

P.A. 99-890 certainly leaves many unanswered questions on how local zoning authorities must address zoning applications from school districts. Unless additional legislation is passed to clarify

these new requirements, or until they are interpreted by a court, these questions may remain unanswered. Until there is additional guidance, we recommend that local zoning authorities strictly follow the procedures laid out in P.A. 99-890. For assistance in complying with the provisions of P.A. 99-890, please contact the Zoning and Land Use Group.

### **Cases to Know**

In [\*Murr v. Wisconsin\*](#), the Wisconsin Court of Appeals held that property owners who sought to separately sell and develop their two adjacent substandard lots were not entitled to compensation for a regulatory taking under the Fifth Amendment when the county denied the owner's request. The court relied on the county's ordinance that "merged" the two adjacent substandard lots under common ownership into one single buildable lot which could still be used for residential purposes. As a result, the owners did "not suffer the loss of substantially all of the beneficial uses of his land" and there was not compensable taking. The property owners petitioned for a writ of certiorari and on January 15, 2015, and the United State Supreme Court agreed to hear the appeal. Be sure to check future editions of *In the Zone* and [\*Municipal Minute\*](#) for updates on the case.

In [\*Hampton v. Metropolitan Water Reclamation District of Greater Chicago\*](#), the Illinois Supreme Court determined that the U.S. Supreme Court's decision in *Arkansas Game and Fish Commission v. U.S.* did not control Illinois state court's interpretation of the Illinois takings clause. The case arose when property owners argued that the Metropolitan Water Reclamation District caused flooding on their properties by diverting storm water into creeks. The Illinois Supreme Court explained that the U.S. Supreme Court's decision is not controlling, but the decision is relevant to the interpretation of the Illinois takings clause. Considering both Illinois cases and U.S. cases, the Illinois Supreme Court concluded that the facts of an Illinois takings claim must be analyzed on a case by case basis.

In [\*Conaghan v. City of Harvard\*](#), a property owner sued the City under 65 ILCS 5/11-13-25 when his special use permit was denied. The property owner applied for a special use permit because he had been allowed to rent his property as a legal nonconforming use. But, after the property was damaged and was vacant for more than 12 months, the City determined that the nonconforming use was abandoned and no longer permitted. The Illinois Appellate Court dismissed the property owner's case because 65 ILCS 5/11-13-25 did not provide an independent cause of action for the property owner.

### **ABOUT ANCEL GLINK**

Visit Ancel Glink's web-site at [www.ancelglink.com](http://www.ancelglink.com) or email us at [inthezone@ancelglink.com](mailto:inthezone@ancelglink.com).

For current information about new and pending legislation, recent cases, and other topics of interest to local governments, you can visit our blog [Municipal Minute](#), follow the Land Use Group on Twitter [@AncelGlinkLand](#), or like [Ancel Glink: Land Use](#) on Facebook.

Other Ancel Glink publications on land use and related issues are available on Ancel Glink's website ([www.ancelglink.com](http://www.ancelglink.com)) for public use and download:

[Zoning Administration Tools of the Trade](#)

[Zoning Administration Handbook](#)

[Economic Development Toolbox for Municipal Officials](#)

[Municipal Annexation Handbook](#)

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