

In the Zone Current Trends in Land Use Law

Winter, 2017

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.

See you at the IAPD/IPRA Soaring to New Heights Conference!

Ancel Glink attorneys will be speaking on a broad range of topics at several upcoming conferences and events. Including:

[Illinois Association of Park Districts Conference](#) (Hilton Chicago - Chicago, IL)

January 20, 2017

Property Brothers: Park Edition

3:30 - 4:45pm

Daniel Bolin

Robert K. Bush

Derke J. Price

Learn the ins and outs of land purchase, sale and lease of park district property and listen to attorneys who have vast experience on park district land transactions.

January 21, 2017

Public-Private Partnerships: How to Determine if They Are Right for You

10:15 - 11:30am

Derke J. Price

In this session, you will gain an overview of public-private partnerships (P3s), how to determine if a P3 is the right approach for your project, and how to pursue a P3.

In This Issue

[See you at the IAPD/IPRA Soaring to New Heights Conference!](#)

[Using Strategic Intervention to Address Blight and Abandonment](#)

[Political Signs: What are the rules?](#)

[Cases to Know](#)

[About Ancel Glink](#)

Creating Intergovernmental Agreements that Are a Win-Win for All

12:30 - 1:45pm

Robert T. McCabe

Derke J. Price

Developing an intergovernmental agreement is a skill that generates a winning solution of accomplishing goals for both the parties of the agreement. Agreements can resolve issues, improve performance, save costs, and create better public benefit by the parties entering the agreement. Come learn the tips and tricks of creating a successful agreement.

Drone Use and Regulations by Park Districts

2:00 - 3:15pm

Derke J. Price

Attend this session to listen to an experienced attorney regarding what can and cannot be done in regulating drones over parks, swimming pools, sport complexes, golf courses, and other facilities. Learn how to control drones in your parks and what uses and applications drones may have for the park district.

Managing Transgender Populations and Accessibility to Public Facilities

2:00 - 3:15pm

Keri-Lyn J. Krafthefer

This session will help attendees become more informed of the topics, terms, and legal right implications and managing privacy and accessibility to public facilities, locker rooms and programs. This session will touch on policy development and best practices if and when an agency is faced with managing this population in their facilities and programs.

Park District Use of Social Media

3:30 - 4:45pm

Daniel Bolin

Greg Jones, AICP

The use of social media impacts many facets of local governance and, among other things, is reshaping the ways in which park districts and their constituents interact. Attend this session to learn about challenges such as the Open Meetings Act, FOIA compliance, privacy concerns, and copyright issues.

[Illinois City Managers' Association Winter Conference](#)

(Pere Marquette Marriott - Peoria, IL)

February 9, 2017

Economic Development Despite the State of Illinois

10:45am - 12:00pm

David Silverman, AICP

Illinois' economic development climate is very competitive. However, there are several strategies that communities can use-big and small-that can help give them a competitive edge. This session will explain the importance and elements of a comprehensive

economic development program; identify community obstacles and opportunities to promote growth and development; understand the legal and practical tools available to realize economic development goals and objectives; and how to implement and market a comprehensive economic development program.

The Spring Elections are Right Around the Corner...Are You Prepared?

2:45 - 4:00pm

Julie Tappendorf

This session will examine ways to engage prospective candidates for municipal elective offices and discuss orientation processes for newly elected officials. The program will also explore warning signs to help avoid communication breakdowns with elected officials and how to effectively navigate interim periods during political transitions.

[American Planning Association - Chicago Metro Section](#)

(Jak's Tap - Chicago, IL)

February 23, 2017

Planning Law Session - Bar Exam II: The Sequel

4 - 5:30pm

Networking at 6:00pm

David Silverman, AICP

Dan Bolin

Christy Michaelson

The APA-CMS "Bar Exam" Planning Law Session is a great opportunity for planners to learn about important legal issues in an authentic law school simulation. Naturally, it takes place in a bar. Participants will compete for unreasonable grades, set by a harsh curve, while studying the hottest planning law topics, including sign code reviews, premises liability for complete streets, school zoning, telecommunications, and lighting ordinances. You could be crowned valedictorian, and win a fabulous prize all while earning valuable AICP CM law credits! After the session, you can pass the bar and grab a drink for some networking with your fellow planners.

Using Strategic Intervention to Address Blight and Abandonment

Vacant and distressed housing stock presents a persistent problem to most Illinois communities. The traditional tools for targeting property maintenance, such as citations and liens, often provide only a partial solution, and they may have little effect on the worst offenders. But early, aggressive intervention can dramatically reduce the long-term impact these blighted properties have on neighborhoods and municipal budgets. For this reason, many municipalities have begun to use their authority to acquire vacant properties as a strategy for reducing blight and saving costs.

A strategic intervention program for distressed property typically involves utilizing two primary tools: 1) an abandonment petition filed by the municipality, which may be paired with an intergovernmental agreement to immediately transfer the property to an intergovernmental land bank; and 2) direct action and lien enforcement under Section 11-31-1 of the Municipal Code, 65 ILCS 5/1-1, et. seq. Both strategies force action on properties before the municipality incurs significant costs, such as cutting grass and other maintenance. Moreover, the specter of early, aggressive action can push responsible owners to act, reducing the pool of problem properties.

Abandonment

Municipalities can work to obtain title to some of the most challenging properties via a declaration of abandonment. See 65 ILCS 5/11-31-1(d). To qualify, a property must meet the following conditions: (i) be either tax delinquent for 2 or more years or have water service bills that are 2 or more years overdue; (ii) be vacant (i.e., not occupied by persons legally in possession); and (iii) have a structure that is in a dangerous and unsafe condition. Id.

Municipalities can help use public records to identify properties that meet these criteria. Once identified, municipal staff can work with local counsel and/or a regional land bank to begin taking direct action. Typically, the cost of seeking title via abandonment will be less than the cost of continuously mowing grass and performing other exterior maintenance for the absentee owner. With title, the municipality can control the future use of the property and take actions to clear structures and resell the lot to a developer.

Strategic Demolition Petitions

If the property is not eligible for abandonment, a municipality can seek authority from the court to complete basic rehabilitation work. This may include board-up, repairs or other work, up to and including demolition, to minimize the hazard posed by the structure. The costs incurred to perform the board-up and maintenance work pursuant to authority in Section 11-31-1(a), including legal costs to bring the petition, can be liened against the property.

Municipalities can foreclose on the lien as part of an on-going building code case. 65 ILCS 5/11-31-1(a). At any time, the owner can pay the costs incurred by the municipality and release the lien. For properties with absentee owners/lienholders, however, it is likely that a foreclosure action will be uncontested, leading to a judgment of foreclosure. With a judgment of foreclosure, the municipality can take the necessary steps to submit the property for a judicial sale, allowing it to ultimately obtain a judicial deed free and clear of all encumbrances and taxes.

For vacant property in disrepair, the municipality can seek authority to board up or repair the structure under 65 ILCS 5/11-31-1(e). This expedited process applies only to buildings that are three stories or less in height, and only to those buildings that the municipality's chief code official determines to be "open and vacant and an immediate and continuing hazard to the community." Id. Unlike

other statutory authority for board up and repair, Section 11-31-1 provides a high-priority lien for all costs, including legal expenses.

Blight, abandonment, and disrepair present a host of problems for municipalities, and traditional solutions can drain precious resources without completely addressing the problem. But there are options available, and strategic and aggressive action early on can allow the municipality to shift its resources into repurposing the properties in a manner that will end the perennial blight and eliminate the mounting costs. For more information, or to discuss intervention strategies, please contact Ancel Glink's Zoning and Land Use Group

Political Signs: What are the rules?

As local government election season approaches, some questions may arise regarding the regulation of political signs. In Illinois, municipalities should consider the limitations on their powers to regulate election signs contained in the Illinois Municipal Code, Illinois Election Code, and the First Amendment of the U.S. Constitution. These limitations are applicable when municipalities are faced with questions such as:

When the election is over can you require my neighbor to take down the old campaign signs in his front yard?

Will you allow my campaign signs to be three times the size of any garage sale sign?

Where can I place my campaign signs on Election Day?

First, since January 2011 municipalities have been prohibited from restricting the amount of time campaign signs can be placed in residential yards. The Illinois Municipal Code, [65 ILCS 5/11-13-1](#), states that "other than reasonable restrictions as to size, no home rule or non-home rule municipality may prohibit the display of outdoor political campaign signs on residential property during any period of time..." This was a dramatic limitation on the power of municipalities to regulate the display of political signs because for many years municipalities had required the removal of political signs shortly after an election. Before taking enforcement action during this election season, you should check your local sign regulations to ensure they are not inconsistent with this law.

Second, to avoid infringing on First Amendment rights, municipalities should consider whether its sign regulations differentiate based on content - garage sale or support for a candidate. If the enforcement of the regulation depends on the message of the sign, the regulation must meet the Supreme Court's strict scrutiny test. In [Reed v. Town of Gilbert](#), the United States Supreme Court found that an ordinance placing a stricter limitation on signs advertising religious services than on signs displaying political messages was unconstitutional. As a result, municipalities

should review any regulations that treat political signs differently than other temporary signs.

Finally, while Illinois municipalities can generally prohibit campaign signs from being placed on government property, Section 17-29 of the Illinois Election Code explicitly allows campaign signs on government property used as a polling place on Election Day and during early voting periods. [10 ILCS 5/17-29](#). The signs must be placed outside the campaign free zone and the campaign free zone is defined by state law.

Municipalities can still regulate political signs, but political sign regulations (and temporary sign regulations) require careful consideration of First Amendment rights and state laws. For assistance in reviewing your temporary sign regulations, please contact Ancel Glink's Zoning and Land Use Group.

Cases to Know

In [Bell v. City of Country Club Hills](#), the Seventh Circuit Court of Appeals rejected a resident's claim that the City's repeal of a previous ordinance that provided a 25% tax rebate to qualifying homeowners was an unconstitutional "taking" in violation of the Fifth Amendment of the U.S. Constitution. The Court explained that the resident had no property interest in the rebate. Rather, the resident had a mere expectation that she would receive the rebate when she filed an application. The resident's "mere expectation" did not rise to the constitutionally protected property right required to prove a takings claim.

In [Village of Willow Springs v. Village of Lemont](#), the Illinois Appellate Court denied the Village of Willow Spring's request to enjoin Lemont from approving a developer's application for rezoning its land from residential to a manufacturing district. Willow Springs argued that Lemont's approval of the application would constitute a public nuisance and would negatively affect the quality of life of Willow Springs' residents, the property values, and its growth and development. The Court found that Willow Springs failed to demonstrate that as a neighboring municipality it was "substantially, directly, and adversely affected in its corporate capacity" by the rezoning and thus lacked standing. The Court also found no reason to enjoin future action that would prevent Lemont from approving the proposed development, noting that "Illinois courts have long refused to preemptively enjoin legislative action, holding that challenges are more properly made to a law's enforcement once it has been enacted."

In [Village of Arlington Heights v. Maria Pappas](#), the Illinois Appellate Court held that the Village of Arlington Heights was required to reimburse the treasurer for "post-TIF" refund payments the treasurer made to owners of property within the TIF districts. The Village had adopted two TIF districts and received all tax increment attributable to the increase in property values. However,

property owners within the TIF districts filed successful tax objections and the treasurer was ordered to issue refunds. The treasurer sought reimbursement from the Village because there was no longer any revenue from the expired TIFs. The Village filed suit and requested a declaration from the Court that it was not liable to repay the treasurer for "post-TIF" refund payments on its own, and that such refunds should be shared by all of the taxing districts. The Court reasoned that the Property Tax Code does not provide an express remedy when the original taxing body which received an erroneous tax payment has dissolved or becomes insolvent, and so the treasurer may exercise discretion to collect the reimbursement from the successor taxing body.

In [*Hanlon v. The Village of Clarendon Hills*](#), the Illinois Appellate Court reiterated the general rule that a municipality's zoning decision will not be invalidated based solely on the municipality's failure to follow its own self-imposed requirements. In this case, neighboring property owners filed suit against the Village of Clarendon Hills challenging the approval of a planned unit development (PUD). The Village's zoning ordinance contained a provision voiding preliminary PUD approval if an applicant failed to file an application for final PUD approval or a request for an extension within one year of the preliminary approval. The developer failed to file a final PUD application or request an extension within one year. But, the Village proceeded to grant the developer final PUD approval in April of 2015, over a year after the preliminary PUD approval which occurred in October of 2013. The Plaintiffs alleged that the Village's failure to strictly follow the one year requirement caused the preliminary PUD approval to become null and void. The Court upheld the Village's approval.

In [*LMP Services v. City of Chicago*](#), the Circuit Court of Cook County held that Chicago's food truck ordinance is constitutional even though it regulates food trucks differently than traditional restaurants. The ordinance requires that food trucks have a GPS system installed on their trucks for City monitoring and that food trucks stay more than 200 feet away from retail food establishments. In this case, a food truck owner argued that these requirements violate the due process and the search and seizure provisions of the Illinois Constitution. The Court concluded that the 200-foot rule is rationally related to two government purposes - managing sidewalk congestion and balancing the interests of food trucks and brick-and-mortar restaurants. As a result, the 200-foot rule does not violate the food truck owner's due process rights. Additionally, the Court found that the GPS requirement is not a search because the government did not surreptitiously place the GPS unit on the truck.

In [*Mendez v. City of Chicago*](#), a group of Chicago homeowners are challenging the City of Chicago's "Shared Housing Ordinance" as an unconstitutional violation of their right to be free of warrantless searches, their due process rights, and their equal protection rights. The ordinance requires shared housing unit operators (hosts) to register with the City and pay a 4% surcharge on the gross rental or

leasing charge of all rentals. The Ordinance also requires "intermediaries" or "advertising platforms" (e.g., Airbnb) to pay a minimum license fee of \$10,000 and obtain a license from the City. Chicago's ordinance follows in the footsteps of cities like San Francisco and New York in seeking to regulate home sharing services such as Airbnb and Home Away. It is not yet clear how successful the homeowners' challenge will be, but the complaint may be of interest to local governments considering similar regulations.

About Ancel Glink

Visit Ancel Glink's web-site at www.ancelglink.com or email us at 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) for public use and download!

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