

IN THE ZONE

Current Trends in Land Use Law

Avoiding Conflicts of Interest in Zoning Proceedings

Illinois law requires members of hearing bodies (such as a plan commission or zoning board of appeals) to be impartial. As a general rule, there is a presumption that members of these hearing bodies are objective and capable of fairly judging an issue. *Kimball Dawson, LLC v. City of Chicago Dept. of Zoning*, 369 Ill. App. 3d 780, 792 (1st Dist. 2006). However, if there is evidence that an official has pre-judged the application before hearing any evidence or testimony at the hearing or cannot put aside his or her personal interests in the outcome of the hearing and decision-making process, then that bias or impartiality could taint the hearing process and expose a municipality to a lawsuit to invalidate any final decision on the application.

Simply being a resident of property near or adjacent to the property that is the subject of the Application is not a legal conflict of interest under Illinois law that would require a plan commission or zoning board member to recuse him or herself from the discussions and decisions on the Application. In addition, an official's public position or expressed strong views on an issue will not alone overcome the presumption of objectivity.

However, if a member's opinion rises to a level of personal or self-interest or shows prejudgment of an application, then the right to an impartial decision is violated. This could occur:

- When a member of a hearing body made statements prior to or outside of the hearing that indicated a strong pre-judgment about the application or how the member would vote;
- If a member of a hearing body signed a petition opposing a particular project; or
- If a member has participated in the organization of a neighbor opposition group or similar activities prior to the hearing.

So, what should a municipality do? If a plan commission or zoning board member has:

- (1) prejudged the merits of the application prior to hearing testimony at the public hearing,
- (2) feels that he or she cannot be impartial in this matter, or
- (3) is unable to judge the application based solely on the standards set forth in the zoning code, setting aside any personal interests in the outcome of the hearing.

Then the member should:

- (a) disclose his or her interest prior to or at the next hearing
- (b) recuse him or herself, and
- (c) state on the record that the member's personal interest would impair the member's ability to participate in the hearing and decision-making process on this application.

If a member recuses him or herself from the hearing discussions and decision on the application, that member still has the right to participate in the hearing (speak in opposition during public testimony or submit written evidence in opposition to the application) in the same manner as any other resident or member of the public.

If you have questions regarding conflicts of interest in zoning proceedings, contact your Ancel Glink attorney.

See you at the APA National Conference in New York City!

If you are planning to attend the 2017 American Planning Association [National Planning Conference](#) in New York City from May 4th to 9th, be sure to say hello to Ancel Glink attorneys [David Silverman](#) and [Dan Bolin](#).

David and Dan will be speaking at several sessions on [ordinances](#), [the influence of a new economy](#), and [real estate law](#).

Want to Learn About Regulation of Short Term Rentals and Social Media?

On May 18, in Ottawa, Illinois, [Greg Jones](#) and [Dan Bolin](#) will be hosting an engaging discussion about coping with, regulating, and fostering emerging technologies at the semi-annual meeting of the North Central Illinois Council of Governments. For more information, click [HERE](#).

Cases to Know

[People for a Safer Society v. Village of Niles](#). An Illinois appellate court held that an organization could file a second amended complaint in an effort to establish its standing to challenge the Village of Niles' approval of a special use permit for a business with firearm sales, an indoor firing range, and firearms safety training.

[Cohen v. Chicago Park District](#). The Illinois Supreme Court agreed to hear the Chicago Park District's appeal of the lower court's decision that sections of the Tort Immunity Act do not apply to the bike paths on the Lakefront Trail.

[Keep Chicago Livable et al. v. City of Chicago](#). A U.S. District Judge refused to stop the implementation and enforcement of Chicago's short term rental ordinance.

[Village of West Dundee v. The First United Methodist Church of West Dundee](#). An Illinois appellate court found that the Village may have violated the Religious Land Use and Institutionalized Persons Act (RLUIPA) when it sought to compel a church to repair, rather than demolish, a historic building.

About Ancel Glink

Ancel Glink's Zoning and Land Use Group has welcomed two new attorneys! [Kurt S. Asprooth](#) and [Megan A. Mack](#) both have significant experience in land use and zoning matters and are excellent resources for Ancel Glink's clients. Welcome Kurt and Megan!

For more information visit Ancel Glink's web-site at www.ancelglink.com or email us at inthezone@ancelglink.com. To stay up to date on pending legislation, recent cases, and other topics of interest to local governments, you can also visit our blog [Municipal Minute](#), follow the Land Use Group on Twitter @AncelGlinkLand, or like Ancel Glink: Land Use on Facebook.

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