

Planning and Development Committee of the McHenry County Board

Land Use & Zoning



Private
Property Rights

Governmental
Regulation

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United States Constitution (1787) Bill of Rights (1791)



- Amendment V
...Nor shall private property be taken for public use, without just compensation
- Amendment IV(i)
...Nor shall any state deprive any person of life, liberty or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the law.

Constitution of the State of Illinois (1970)

Article I, Section 2, Due Process and Equal Protection

No person shall be deprived of life, liberty or property without due process of law nor be denied equal protection of the law.

Article I, Section 15, Right of Eminent Domain

Private property shall not be taken or damaged for public use without just compensation as provided by law. Such compensation shall be determined by a jury as provided by law.

Government Regulatory Powers

- The United States Constitution implicitly grants the States power to pass laws and regulations that promote the public health, safety, morals, or general welfare of their inhabitants – Article X, United State Constitution.
- Police power is granted to the States, but not local governments
- Local governments must look to legislation for authority to enact zoning ordinances
- Restrictions may be imposed upon private property only if it bears a reasonable and substantial relation to the public health, safety, morals, or general welfare

The Beginning...

United States Supreme Court

- *Village of Euclid v. Ambler Realty Company*, 272 U.S. 365 (1926).

Illinois

- State of Illinois Laws of 1921, pp. 180 – Enabling legislation to municipalities to zone
- *The City of Aurora v. Robert Burns*, 319 Ill. 84 (1925). Upheld ordinance establishing zoning districts.

The State of Illinois Enables Counties to Zone

- The Illinois County Code grants zoning authority to counties

“For the purpose of promoting the public health, safety, morals, comfort and general welfare, conserving the values of property throughout the county, lessening or avoiding congestion in the public streets and highways, and lessening or avoiding the hazards to persons and damage to property resulting from the accumulation or runoff of storm or flood waters.” 55 ILCS 5/5-12001



- This statute also places significant limitations on how a county may regulate agriculture, public utilities and telecommunications.
- The Regulations based on County police powers
 - The Six (6) Regulated Areas:
 - Location and use
 - Intensity of use
 - Setback – Building Line
 - Create Zoning Districts
 - Prohibit Incompatible uses
 - Enforcement Relating to Existing Structures
(55 ILCS 5/5-12001)

Zoning Process

- Notice
 - Publication
 - Adjoining Property Owners
 - Governmental Entities
 - Soil & Water
 - Posting on Property
- Hearings
 - Hearing officer - Variances
 - Zoning Board of Appeals – Amendments, Conditional Use Permits, and when included with either of the above, Variances

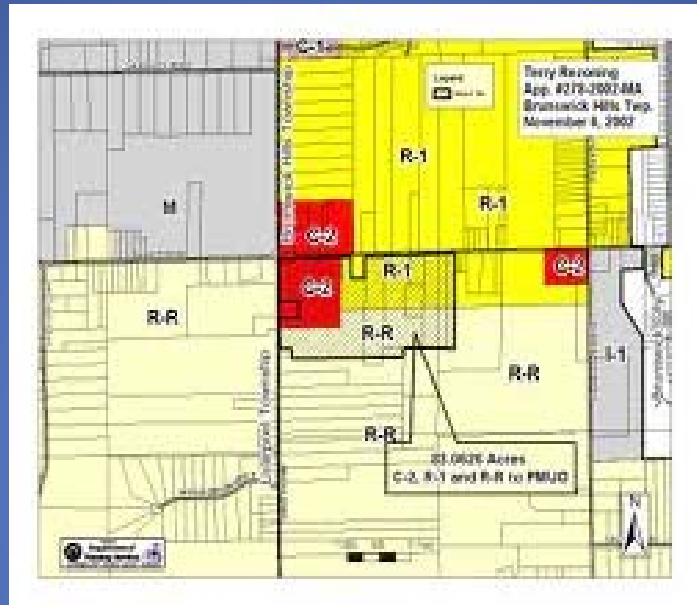
- Final Determination and Action – County Board
 - Vote Required - Simple Majority of the Elected County Board Members
- Protests
 - Owners of 20% of Frontage – Map Amendment
 - 5% Land Owners in County Text Amendment
 - Municipalities within 1.5 miles of take land proposed to be rezoned – map amendment
 - Township Plan Commission (County less than 600,000) – Variance, Text and Map Amendments
 - Vote Required - $\frac{3}{4}$ of all members of the County Board

Amendments

- Amendments
- Text and Map Amendment:
 - Illinois County Code 5-12014 (55 ILCS 5/5-12014)
 - McHenry County Ordinance: Sections 804.1, 804.2, 804.3, 804.6, 807



- Text Amendment: Amendment or Change to Zoning Ordinance
 - e.g. Add an E-4 Estate District with a minimum lot size of 4 acres



- Map Amendment: Amend the Zoning District on a Specific Lot or Parcel
 - e.g. Change zoning on a parcel from E-5 (5 acre minimum) to E-2 (2 acre minimum)

Conditional Use (Special Use)

- Illinois County Code 5-12009.5 (5 ILCS 5/5-12009.5)
- McHenry County Zoning Ordinance Article 5
 - Conditional Use
 - Public, quasi-public uses, uses having a unique, special or unusual impact on use and enjoyment of neighboring properties
(e.g. Airport, mining, composting facilities)
 - Standards – See Article 5
 - General standards for conditional uses
 - Standards specific to the proposed use
 - Imposition of Conditions

Variations

- Illinois County Code, 5-12009 (55 ILCS 5/5-12009)
- McHenry County Zoning Ordinance Article 7
- Purpose: Vary Application of Authorized Regulations in Harmony with their General Purpose and Intent
 - e.g. front yard setback from 30' to 27.5'
- Basis for variations:
 - Practical difficulties or particular hardship
 - Administrative variations – 10% or less of regulations as to location of structure

- Standards:
 - Section 703 – Ordinance Enumerates 7 Standards
- Vote
 - If Zoning Board of Appeals does not approve the variance, favorable vote of $\frac{3}{4}$ of all members of the County Board is required.

Comprehensive Plan

- Establishes connection between land use and the health, safety, and welfare of the public
- Well drawn comprehensive plans are important because courts have found that a proper comprehensive plan and zoning in conformance with it support a showing of proper exercise of the police power in the zoning of a particular piece of land
- Courts emphasize the importance of the comprehensive plan
- Adherence to a carefully drawn comprehensive plan helps avoid making decisions that are arbitrary or capricious

Judicial Review

- Courts Conduct De Novo Review of Board Legislative Decision
 - Must be commenced within 90 days of decision (55 ILCS 5/5-12012.1)
- Standard of Review
 - Is the decision of the Board unreasonable, arbitrary and capricious and bears no substantial relationship to public health, safety and welfare?



Criteria for Judicial Review

- *LaSalle National Bank of Chicago v. County of Cook*, 12 Ill.2d 40 (1957)

LaSalle National Bank Factors:

1. The existing uses and zoning of nearby property
2. The extent to which the property values are diminished by the particular zoning restrictions
3. The extent to which the destruction of property values of plaintiff promotes the health, safety, morals, and general welfare of the public
4. The relative gain to the public as compared to the hardship imposed upon the individual property owner
5. The suitability of the subject property for the zoned purposes; and
6. The length of time the property has been vacant as zoned considered in the context of land development in the area in the vicinity of the subject property

- *Sinclair Pipe Line Co. v. Village of Richton Park*, 19 Ill.2d 370 (1960)

Sinclair Pipe Line Factors:

7. The community need for the proposed use and
8. The care with which the community has undertaken to plan its land use development.

Limitation of Governmental Regulations Under the Takings Clause

- U.S. Constitution Amendment V:

Amendment V...Nor shall private property be taken for public use, without just compensation

- Constitution of the State of Illinois:

Article I, Section 15, Right of Eminent Domain

Private property shall not be taken or damaged for public use without just compensation as provided by law. Such compensation shall be determined by a jury as provided by law.

- Development ban on vacant beachfront lots – elimination of economic use – Taking
Lucas v. South Carolina Coastal Council, 505 U.S. 1003 (1992).
- Building permit conditions requiring dedication of bike/pedestrian path to a greenway – Taking
Dolan v. City of Tigard, 512 U.S. 374 (1994).
- Failure to approve development plans scaled back 5 times to accommodate city – Fact question for jury to decide.
City of Monterey v. Del Monte Dunes, 526 U.S. 687 (1999).
- Requiring dedication of 20% of property to secure zoning approval appeal – Taking
Amoco Oil Co. v. Village of Schaumburg, 277 Ill. App. 3d 926 (1st Dist. 1995).

Public Comments



- What does the public have to say?
- How should the county consider it?

A Caution and Some Final Thoughts

Section 1983 Civil Rights Act of 1871

“Every person who, under color of any statute, ordinance...subjects, any citizen of the United States...to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law.”

- Constitutional / Due Process Equal Protection Claims
 - Delay in Zoning Progress, *Guth v. Tazwell Co*, 689 F 3d 580 (7th Cir. 2012).
- Immunity if Acting in Legislative Capacity
 - Administrative or Executive Acts of Legislators are Not Protected. *Ratetzee v. Rockett*, 852 F 2d 946 (7th Cir. 1988).
- Follow the Ordinance
- Talk to the State's Attorney
- Thoughtful, Reasoned Approach, Sound Analysis Results in a Supportable Decision