



ZONING LAW BASICS

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Lake County Bar Association

Presented by:

Bryan R. Winter | bwinter@fuquawinter.com | 847.244.0770

Fuqua Winter Ltd.

Outline

- 1. History of Zoning Laws**
- 2. Authority for Zoning**
- 3. Types of Requests**
- 4. The Public Hearing Process**
- 5. Judicial Review**

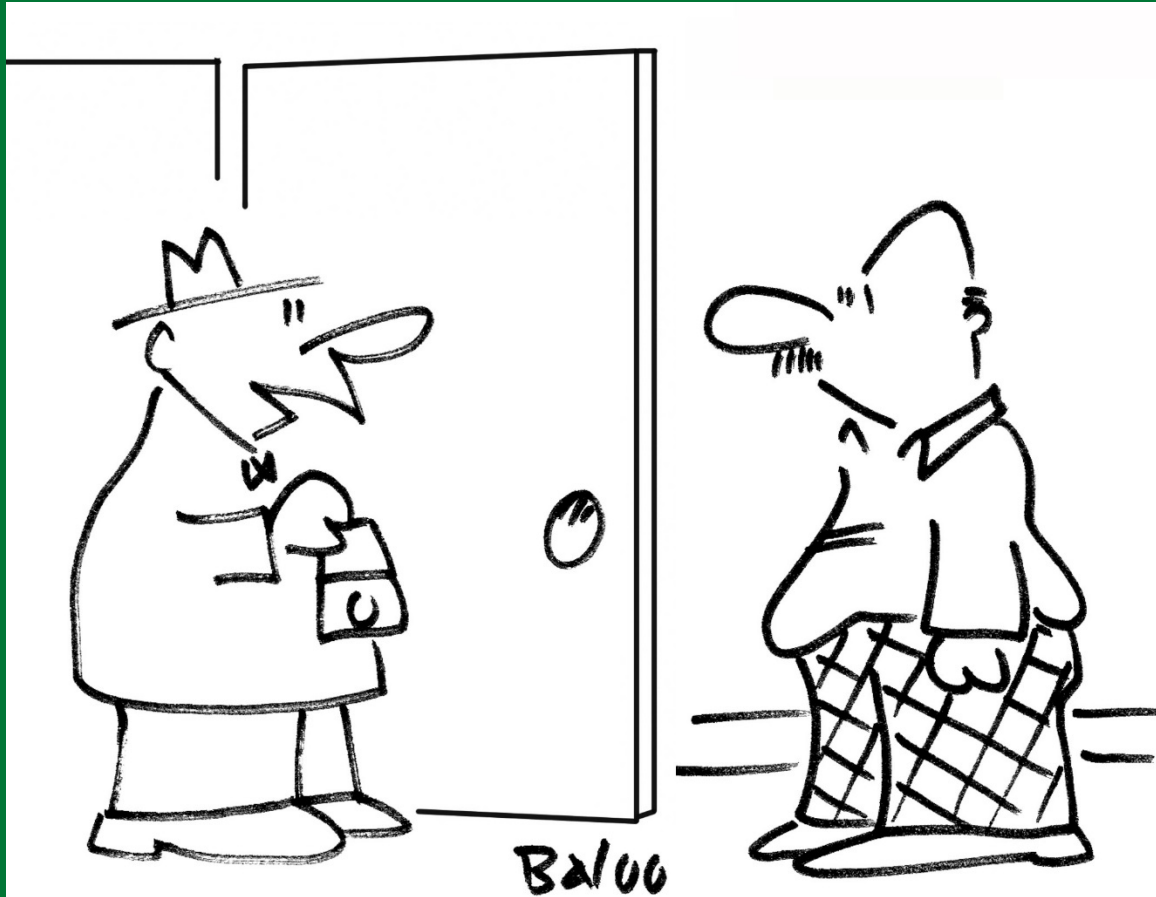
1. History of Zoning Laws

Adoption of zoning regulations began in 1860s

- **New York City adopted its first city wide zoning regulations in 1916**
- **The U.S. Supreme Court upheld the constitutionality of zoning ordinances in 1926 (Village of Euclid, Ohio v. Ambler Realty Co.)**

Primary Purpose of Zoning Laws

1. **Creates a process to provide for comprehensive urban planning**
2. **Protects and enhances property values**
3. **Promotes public safety and welfare**



"I'm from the City Zoning Commission, sir — I'm afraid that mustache will have to go."

2. Authority for Zoning

Authorized by state statute (65 ILCS 5/11-12-5); every municipality may create a plan commission.

By statute, duties include:

- 1. Prepare and recommend comprehensive plan for present and future development**
- 2. “Other” related duties (allows municipalities to legislate by ordinance the duties of its local plan commission)**

Authority for Zoning, cont'd

3. 65 ILCS 5/11-13-1.1
Pertains to special uses

4. 65 ILCS 5/11-13-6
Pertains to variations;
hearings; notice

Current Concerns in Land Planning

- **Timeliness of reviews**
- **Gold-plating of approval standards**
- **Coordination among governmental units (i.e. Army Corps of Engineers; IDOT; LCPW)**
- **Traditional retail zoning becoming obsolete**

3. Types of Requests

- 1. Variance**
- 2. Special Use Permits**
- 3. Rezoning (Map Amendments)**
- 4. Planned Unit Developments**

Characteristics of Variance Requests

- 1. Usually involves relief from an “area” regulation or dimensional restriction (i.e., setback lines, height limits and minimum lot size)**
- 2. Particular facts of case determine whether variation is proper**

Special Use vs. Variance Requests

- **Special Use Permits allow a property owner to seek use of property in a way allowed by ordinance, but not permitted by right**
- **Variations allow a property owner to use property in manner forbidden by the zoning ordinance**

Special Use Permits

1. Provides greater zoning flexibility
2. Weighs desirability of particular development against potential adverse impacts

Special Use Considerations

- Use is permitted within zoning district, so use is not inconsistent with public health, safety, morals, or general welfare within zoning district
- Proposed use has attributes that could adversely affect adjoining and surrounding properties
- Public hearing is to determine if proposed particular use at a particular location will create adverse effects

Conditions with Relief

- **Condition must relate to an “effect” caused by granting relief**
- **Conditions are “reasonably necessary” to meet standards in zoning ordinance**
- **Cannot impose arbitrary conditions (example: requiring dedication of land for road expansion; placing limitations on families with children)**



"Well I'll be darned! Accordin' to this here zoning law, this town is *plenty* big enough for both of us!"

Map Amendments

1. **Legislative decision, subject to judicial review with constitutional considerations**
2. **In Illinois, courts have developed a list of “factors” to decide whether zoning regulation is constitutional**

Planned Unit Developments

Allows:

- **Clustered buildings**
- **Common open space**
- **Better design by varying lot sizes, setbacks and other site development requirements**
- **Facilitates a mixture of different residential uses with commercial uses**

4. The Public Hearing Process

General Procedures for Hearing:

1. Summary statement of application
2. Presentation of case by the Applicant
3. Cross-examination of Applicant's Witnesses
4. Testimony by supporters and detractors
5. Discussion and vote

Board Member Participation

- 1. Impartiality - No board member should play a decision-making role if he or she has a personal interest in outcome**
- 2. Must consider the evidence and interest of entire community, not personal opinion or just groups present at hearing**

Making Findings of Fact

- 1. Must be based on evidence in record, not on speculation**
- 2. Considerations may include noise, vibrations, odors, air quality, outdoor lighting, traffic, operating characteristics, overcrowding of schools, availability of infrastructure, etc.**
- 3. Application of facts to standards**

Board Recommendations

- 1. Must deal freely with each request that comes before the Board**
- 2. Prior decisions are not binding as past precedent or “stare decisis”**

5. Judicial Review- History

1. ***LaSalle National Bank v. County of Cook*, 12 Ill.2d at 40 (1957) and *Sinclair Pipe Line Co. v. Village of Richton Park*, 19 Ill.2d 370 (1960)**
2. ***People ex rel. Klaeren v. Village of Lisle*, 202 Ill.2d 164 (2002)**
3. **Anti-Klaeren Statutes, including 65 ILCS 5/11-13-25 (municipalities); 55 ILCS 5/5-12012.1 (counties) (effective 2009)**

LaSalle/Sinclair Factors

1. The compatibility with the existing use and zoning of nearby property
2. The extent to which property values of the subject property are diminished by the existing zoning restrictions
3. The extent to which the proposed amendment promotes the public health, safety, and welfare of the Village.
4. The relative gain to the public, as compared to the hardship imposed upon the applicant

La Salle/Sinclair Factors cont'd

- 5. The suitability of the subject property for the purposes for which it is presently zoned**
- 6. The length of time that the subject property in question has been vacant, as presently zoned, considered in the context of development in the area where the property is located**
- 7. The consistency of the proposed amendment with the Comprehensive Plan, and any adopted land use policies**
- 8. That the proposed amendment will benefit the needs of the community**

Klaeren Decision

Held: Special use hearings result in administrative decisions

“The municipal body acts in a fact-finding capacity to decide disputed adjudicative facts based upon evidence adduced at the hearing and ultimately determines the relative rights of the interested parties. As a result, those parties must be afforded due process rights normally granted to individuals whose property rights are at stake.”

65 ILCS 5/11-13-25

§ 11-13-15. Actions subject to de novo review; due process.

(a) Any decision by the corporate authorities of any municipality, home rule or non-home rule, in regard to any petition or application for a special use, variance, rezoning, or other amendment to a zoning ordinance shall be subject to de novo judicial review as a legislative decision, regardless of whether the process in relation thereto is considered administrative for other purposes. Any action seeking the judicial review of such a decision shall be commenced not later than 90 days after the date of the decision.

(b) The principles of substantive and procedural due process apply at all stages of the decision-making and review of all zoning decisions.

Judicial Review- Presently

- 1. De Novo Review**
- 2. Rational Basis Test**
- 3. Rules of Statutory Construction**
- 4. Pleading requirements**

De Novo Review

Section 5/11-13-25 References “de novo judicial review”; not a de novo trial.

Is there a distinction?

See: *Millineum Maintenance Management, Inc. v. County of Lake*, 384 Ill. App.3d 638, 894 N.E.2d 845, 323 Ill.Dec. 819 (2008)

Rational Basis Test

Under this test, a statute will be upheld if it bears a rational relationship to a legitimate legislative purpose and is neither arbitrary nor unreasonable.

Village of Lake Villa v. Stokovich, 211 Ill.2d 106, 122, 284 Ill.Dec. 360, 810 N.E.2d 13 (2004); *Tully*, 171 Ill.2d at 304, 215 Ill.Dec. 646, 664 N.E.2d 43. *Napleton v. Village of Hinsdale*, 229 Ill.2d 296, 307 (Ill., 2008)

Rules of Construction

Statutes are presumed constitutional, and the burden of rebutting that presumption is on the party challenging the validity of the statute to clearly demonstrate a constitutional violation. *O'Brien v. White*, 219 Ill.2d 86, 98, (2006). Courts have a duty to uphold the constitutionality of a statute when reasonably possible, and, therefore, if a statute's construction is doubtful, a court will resolve the doubt in favor of the statute's validity. *People ex rel. Sherman v. Cryns*, 203 Ill.2d 264, 291, (2003).” *Napleton*, Id. at 229 Ill.2d 306-307.

Conclusion - Courts will:

- 1. Apply LaSalle/Sinclair factors;**
- 2. Base decision on evidence presented during de novo review;**
- 3. Using rational basis test and statutory rules of construction.**

