Ancel Glink | Diamond Bush DiCianni & Krafthefer

A Professional Corporation
140 South Dearborn Street, Suite 600
Chicago, IL 60603
www.ancelglink.com
(P) 312.782.7606

David S. Silverman
dsilverman@ancelglink.com
Daniel J. Bolin
dbolin@ancelglink.com
Christy L. Michaelson
cmichaelson@ancelglink.com

APA-CMS Bar Exam: Planning Law Mardis Gras!
David Silverman - Dan Bolin - Christy Michaelson
February 27, 2018 – 3:30 p.m. to 5:00 p.m.
Haymarket Brewery, 737 W Randolph St., Chicago, IL

Take Home Tips on Important Planning Topics

1. **5th Amendment Takings:** *Murr v. Wisconsin*, 137 S.Ct. 1933 (2017). There are three important things to know from *Murr:*
   - A reasonable restriction that predates a landowner's acquisition is an objective factor that reasonably informs property rights expectations. The merger provision that required the two adjoining commonly owned lots, neither of which was individually buildable, to be merged for application of zoning requirements was a legitimate exercise of governmental power.
   - Property owners cannot limit their takings claim to the portion claimed to be affected by a regulation. This preserves the "Whole Parcel Rule" that has been established through several Supreme Court cases, requiring a court to analyze a landowner's entire contiguous parcel in assessing the economic impact of a zoning regulation.
   - Regulations that restrict use of parts of a contiguous parcel may add value to the entire parcel if they preserve natural amenities; put another way, the value added by regulations through use prohibition may outweigh any claimed taking by a landowner.

2. **Signs:** *Image Media Advertising, Inc. v. City of Chicago*, 2017 WL 6059921 (N.D. Ill. December 7, 2017). As municipalities across the country update their sign ordinances, they should take care to carefully implement and administer non-conforming sign regulations. Allowing non-conforming signs to continue, until the applicant seeks to change or expand the sign, will help avoid a takings claim.

3. ***Nuisance:*** *Village of Chadwick v. Nelson,* 2017 IL App (2d) 170064 (Dec. 15, 2017). The important take away is that municipalities must be cognizant that their local control over nuisance abatement is not limitless. The Village's enforcement of a new nuisance ordinance prohibiting anyone from keeping cattle, horses, pigs, etc. was preempted by the Farm Nuisance Act which protects farm owners from nuisance suits if the farm has been in operation for more than one year.

4. **Drones:** *Singer v. City of Newton*, No. 17-10071-WGY, 2017 U.S. Dist. LEXIS 153844 (D. Mass. Sep. 21, 2017). Local governments should adopt policies to govern their own drone use, and acknowledge their limits to regulate public drone use in accordance with FAA regulations. Preemption issues may arise with local operational restrictions on flight altitude, flight paths, and regulation of navigable airspace. Local governments may still enforce traditional police power regulations, including land use and zoning laws, to the extent they do not conflict with FAA rules.

5. **Guns:** *Kole v. Village of Norridge*, No. 11 C 3871, 2017 U.S. Dist. LEXIS 178248 (N.D. Ill. Nov. 6, 2017). Planners should carefully consider appropriate locations for firing ranges and gun stores where residents can exercise their new Second Amendment rights in their community. Firing ranges and gun stores may be an unlisted use, which could be interpreted as an unconstitutional ban. On the other hand, some listed uses (e.g., sporting good stores and recreational uses) could unwittingly permit firing ranges and gun stores in unexpected locations.

Ancel Glink | Diamond Bush DiCianni & Krafthefer

A Professional Corporation
140 South Dearborn Street, Suite 600
Chicago, IL 60603
www.ancelglink.com
(P) 312.782.7606

David S. Silverman
dsilverman@ancelglink.com
Daniel J. Bolin
dbolin@ancelglink.com
Christy L. Michaelson
cmichaelson@ancelglink.com

6. **Religious Land Uses (RLUIPA):** *Christian Assembly Rios de Agua Viva v. City of Burbank*, 237 F.Supp.3d 781 (N.D. Ill. February 21, 2017); *Immanuel Baptist Church v. City of Chicago*, 2017 WL 4224617 (N.D. Ill. September 22, 2017). Both decisions support the ability of government to regulate religious assembly uses and to even, under specific circumstances, impose different subsidiary standards, such as parking requirements. However, not all differing standards will survive court review and attempts to amend ordinances to remove unequal terms, after a religious assembly use has already suffered harm, will not insulate a government from liability.
    - Under the holdings in *Christian Assembly*, (1) government does not impose a "substantial burden" on the exercise of religion under RLUIPA by following regular procedures for applicants seeking zoning relief; and (2) Governments that amend ordinances to remove regulations that treat religious and secular assembly uses differently still violate RLUIPA if a religious institution suffered harm under the unequal terms of the previous ordinance.
    - Under the holdings in *Immanuel Baptist*, (1) a religious assembly use must provide specific evidence that similarly situated, comparable secular assembly uses are treated more favorably than a religious assembly use when challenging a regulation under RLUIPA's equal terms provision; and (2) a regulation of general applicability that does not discriminate between religious denominations, and does not greatly interfere with or regulate the ability of church members to adhere to the central tenants of their beliefs will usually be found to not violate RLUIPA's substantial burden provisions or the Equal Protection Clause.

7. **Tort Immunity**: *Cohen v. Chicago Park District,* 2017 IL 121800 (Dec. 29, 2017). The Illinois Supreme Court has effectively extinguished the absolute immunity provided to municipalities under Section 3-107(a) of the Tort Immunity Act for urban and suburban bicycle/pedestrian paths. While the municipalities can still rely on 3-106 which provides immunity from injuries occurring on recreational areas (ie: parks, playgrounds, open areas, buildings or other enclosed recreational facilities), they must be cognizant of the willful and wanton exception of 3-106 and must attempt to discover and take action to correct or warn of dangerous conditions or risk liability for willful and wanton conduct in failing to maintain shared-use paths in a reasonably safe condition.

8 **Annexations:** *In re Petition to Annex Certain Territory to Village of Lemont*, 2017 IL.App.1st 170941 (Ill.App.1st 2017). In instances of competing annexation petitions, there are three key points: (1) public policy considerations between competing voluntary and involuntary annexations petitions favor voluntary annexations; (2) the petition filed first in time is entitled to priority over the later filed petition, unless the first petition is abandoned; and (3) a party abandons its petition to annex when it takes no action on its petition and frustrates the annexation plans of a neighboring community in the process, but a claim of abandonment can be defeated by evidence showing that actions were taken toward completing the annexation.

This handout is available for download from the Resource Center at ancelglink.com. If you have questions about today's presentation, feel free to email to David S. Silverman (dsilverman@ancelglink.com), Daniel J. Bolin (dbolin@ancelglink.com), or Christy L. Michaelson (cmichaelson@ancelglink.com).

Ancel Glink is a full service government law firm that has consulted with and represented Illinois local government at all levels for nearly 90 years. Ancel Glink attorneys have the experience and expertise in a variety of practice areas relating to local governments, serving as both general counsel as well as special counsel for numerous municipalities across the state. Ancel Glink is ready to meet virtually any legal services a local government may need.