APA-CMS "Bar Exam" Planning Law Session
Teachers Edition

David S. Silverman - Daniel J. Bolin - Gregory W. Jones

1. The Town of Loveland hopes to reduce the number of armed robberies at adult bookstores by requiring them to close at midnight. Do the Town-imposed hours of operation violate the bookstore's First Amendment rights?
    a. Yes, hours of operation are always unconstitutional.
    b. No, hours of operation are never unconstitutional.
    c. Yes, unless the Town provides sufficient justification.
    d. No, armed robberies are always sufficient justification.

djb1

Annex Books, Inc. v. City of Indianapolis, Ind., 740 F.3d 1136 (7th Cir.) *cert. denied*, 135 S. Ct. 99, 190 L. Ed. 2d 40 (2014)

In *Annex Books, Inc. v. City of Indianapolis, Ind.*, an Indianapolis ordinance, which required that adult bookstores be closed all day on Sundays and from midnight until 10 a.m. on the other days of the week, was an improper restriction on content-based speech. Although state and local governments can impose content-neutral limitations on adult businesses through time, place, and manner restrictions in an effort to decrease secondary effects of those businesses, restrictions on content-based speech are generally unconstitutional under the First Amendment. Indianapolis' justification for its restriction on adult bookstores was to decrease the number of armed robberies at or near these adult bookstores.

The Seventh Circuit Court of Appeals found that Indianapolis' justification was insufficient; there was no evidence to suggest that armed robberies occurred more at adult bookstores than other late-night businesses. The armed robberies that did occur were primarily directed against the adult bookstores or the patrons who frequented these adult establishments, not other third-parties. These adult bookstores, as well as their patrons, assume the risk of potentially being robbed; therefore the hours of operation imposed by Indianapolis were not directed at the alleged secondary effects of armed robberies on third parties. It is not permissible to suppress speech itself when addressing the secondary effects of the speech. In addition, although government can limit the distribution of obscene material, Indianapolis did not assert that these adult bookstores sold any obscene material.

2. The small Village of Prudeville established an "adult entertainment zone" of just 0.09% of the Village. Does the prohibition of adult uses in 99.91% of the Village provide the constitutionally- required "reasonable alternative avenues of communication?"
    a. Yes, this zone is constitutionally sufficient.
    b. **Yes, if the zone was created to address secondary effects.**
    c. No, adult entertainment zones must be larger.
    d. No, adult entertainment businesses can operate anywhere.

djb2

D.H.L. Associates, Inc. v. O'Gorman, 199 F.3d 50 (1st Cir. 1999)

In *D.H.L. Associates, Inc. v. O'Gorman*, a Tyngsborough, a Massachusetts zoning ordinance which restricted adult entertainment to a specific zone, was constitutionally upheld. In that case, a restaurant owner, operating a restaurant in the general commercial use zone, advertized that the restaurant would soon have nude dancing. Although the restaurant owner had a liquor and entertainment license, adult entertainment was not incorporated into these licenses. The zoning ordinance had been altered over the years and in 1994, when the restaurant owner first advertized the nude dancing, adult entertainment only existed in theory since the zone had no actual parcels of land. But in 1996 Tyngsborough altered the adult entertainment zone to include 0.09% of the Town's total land area. The district court, relying on the 1996 adult entertainment zone, found that the zone was constitutional. The restaurant owner appealed, challenging the constitutionality of the ordinance.

On appeal, the court of appeals found that although nude dancing is a form of constitutionally protected speech, Tyngsborough's zoning restriction was proper. In deciding whether the zoning ordinance was a content based or content neutral restriction, the court of appeals found that the ordinance was created to address secondary effects of nude dancing, not a restriction on nude dancing itself, and was therefore content neutral. The court found that the zoning ordinance addressed the secondary effects of the burden adult entertainment establishments place on police officers, since Tyngsborough had two adult clubs that produced more police calls than other clubs. Content-neutral restrictions can be constitutional if the restriction serves a "substantial government interest and allows for reasonable alternative avenues of communication." The court of appeals found that the secondary effects were a substantial government interest and the zoning ordinance allowed for other alternative avenues of communication, since there were potentially available lots available for these businesses. Tyngsborough is a rural town and although the commercial district of the town is very small compared to the town's total acreage, the town had six adult businesses operating with more than six lots available.

3. Johnny just bought a restaurant in Pleasantville with plans of turning it into an adult business, featuring nude dancers. The next day, Pleasantville changed its zoning ordinances to prohibit Johnny from turning his new restaurant into an adult business. Did Pleasantville violate Johnny's First Amendment rights?
    a. Yes, Pleasantville is prejudiced against nude dancers.
    b. Yes, Johnny bought this restaurant before the ordinances.
    c. No, Pleasantville has zoning authority.
    d. No, if the ordinances addressed negative secondary effects.

djb3

***BBL, Inc. v. City of Angola*, No. 14-1199, 2015 WL 8021983 (7th Cir. Dec. 7, 2015)**

In *BBL Inc. v. City of Angola*, plaintiffs purchased a restaurant in the City of Angola, Indiana, with the intention of converting the restaurant into an adult-entertainment venue with nude dancing. A few days after plaintiffs made the purchase, the City amended its zoning ordinances to prohibit this use of the property, imposing a 750-foot residence buffer zone requirement. Plaintiffs sued the City alleging violations of their First Amendment rights. Specifically, plaintiffs argued that the licensing and zoning amendments violated their right to expressive conduct and that a permit requirement was an impermissible prior restraint on speech.

The Seventh Circuit affirmed the denial of a preliminary injunction against the ordinance, applying intermediate scrutiny to the content-neutral licensing and zoning regulations. The Seventh Circuit looked to whether the challenged regulations were justified without reference to the content of the regulated speech and whether the adverse secondary effects relied on by the municipality have a basis in reality. The court concluded that the plaintiffs' First Amendment rights were not violated as the ordinances were designed to reduce the negative secondary effects of adult entertainment establishments. Further, several other land parcels were available where the adult entertainment business could operate. Finally, the Seventh Circuit found the permit requirement to be moot as the requirement had been later removed in the zoning amendments.

4. The Village of Shotlanta allows firing ranges in its Industrial District, but prohibits them within 500 feet of sensitive places, such as schools and day care centers. Do Shotlanta's zoning regulations violate the Second Amendment?
    a. All of the regulations are constitutional.
    b. The special use permit is unconstitutional, but the buffer is ok.
    c. The buffer is unconstitutional, but the special use permit is ok.
    d. None of the regulations are constitutional.

djb4

Ezell v. City of Chicago, 70 F. Supp. 3d 871 (N.D. Ill. 2014)

In *Ezell v. City of Chicago*, Chicago adopted new zoning regulations which plaintiffs argued violated their Second Amendment rights to acquire and maintain proficiency in the use of firearms. The City argued that the laws are constitutional because they regulate rather than restrict constitutional rights, and in a recent decision, the District Court for the Northern District of Illinois upheld many of Chicago's firing range regulations.

To determine which regulations were upheld, the Court analyzed each individual regulation by weighing the burden it placed on plaintiffs' Second Amendment rights against the evidence the City relied on to justify it.

Zoning Restrictions

The first zoning restriction the court examined limited the location of firing ranges to manufacturing districts with special use approval. The court held that this regulation was unconstitutional because the restrictions were too burdensome in light of the public interest being served by the regulation.

The second zoning restriction required firing ranges to be at least 500 feet from residential zones, schools, day-care facilities, places of worship, museums, libraries, or hospitals and at least 100 feet from any other firing range. The court upheld this requirement because it seeks to protect important interests and is not a substantial burden on Second Amendment rights.

5. The Village of Shotlanta imposes construction and operation requirements on firing ranges, requiring bullet-proof doors and a range master present at all times. Additionally, firing ranges must close by 8 p.m. Do Shotlanta's regulations violate the Second Amendment?
    a. All of the regulations are constitutional.
    b. The construction and operation requirements are unconstitutional, but the hours of operation are constitutional
    c. **The construction and operation requirements are constitutional, but the hours or operation are unconstitutional.**
    d. All of the regulations are unconstitutional.

djb5

Ezell v. City of Chicago, 70 F. Supp. 3d 871 (N.D. Ill. 2014)

In *Ezell v. City of Chicago,* Chicago also adopted new construction requirements and business regulations for firing ranges in the City. Plaintiffs' argued that the new construction requirements and business regulations violated their rights to acquire and maintain proficiency in the use of firearms. The City argued that these laws were constitutional because they regulate rather than restrict constitutional rights.

Construction Requirements

The court evaluated the requirements that firing ranges have ballistic-proof walls and doors, separate interlocked ventilation systems, and sound limits. The court found that these requirements were constitutional because the regulations are reasonable, directly advance the safety of citizens, and are supported by substantial evidence. Further, the court stated that these requirements "merely regulate" and impose only a minor burden on Second Amendment rights.

Business Operations

Finally, the court considered the constitutionality of the regulations restricting the business operations of firing ranges. The court held that the regulations that no person under the age of 18 be permitted in a shooting range facility, that all managers, range masters, and employees possess FOID cards, and that a range master be present during all operating hours were constitutional because the City's rationale is sufficient to justify the small burden each regulation places on the plaintiffs' Second Amendment rights.

In contrast, the restriction permitting ranges to operate only between 9:00 am and 8:00 pm was not constitutional. The City failed to provide evidence "tending to show that a range has a greater impact on traffic or police inquiries than any other business or location" or that "criminal activity involving a firing range can be expected to increase after 8 p.m."

6. Smokesburgh adopted a one year moratorium on all cannabis uses to allow its city planner to study potential regulatory strategies. No cannabis businesses can be established during the moratorium. Is Smokesburgh's moratorium legal?
    a. No, moratoriums are never legal.
    b. Yes, temporary moratoriums are always legal.
    c. Yes, if the moratorium reasonably prohibits cannabis uses.
    d. No, this moratorium unreasonably prohibits cannabis use.

gwj1djb11

410 ILCS 130/140- Illinois Compassionate Use of Medical Cannabis Pilot Program Act

The Act prohibits "unreasonably prohibiting" cannabis uses. Therefore, although a moratorium is a prohibition, it is temporary and for a specific purpose. Courts have historically upheld zoning moratoria to allow cities to study specific issues. However, if the moratoria are longer than 1 year, you may run into an issue. The Act is a pilot program set to expire in 2018, therefore if a city enacted a 2 year moratoria that would not leave any real time for a cannabis use to locate in the city.

It is also important that the city actually study the use during the moratorium. The city cannot just say that it is going to do it, it must actually do it, and regulations should be adopted at the moratorium's conclusion.

7. Munchieville approved a special use permit for Johnny's Pot, a medical cannabis retailer, with a condition requiring Johnny to provide sufficient parking for its employees. Johnny leased parking spaces from a neighboring business, but the lease expired. Johnny's employees now have to park on the other side of the highway and cross four lanes of traffic to get to work. Can Munchieville revoke Johnny's special use permit?
    a. No, municipalities can never exercise zoning power over cannabis use.
    b. Yes, municipalities can always exercise zoning power.
    c. Yes, municipalities can exercise zoning power if it does not conflict with the state's medical cannabis act.
    d. No, cannabis businesses do not have to comply with zoning regulations.

gwj2djb12

410 ILCS 130/140- Illinois Compassionate Use of Medical Cannabis Pilot Program Act

The Act allows local governments to enact reasonable zoning ordinances or resolution, not in conflict with the Act or Department of Agriculture or Department of Financial and Professional Regulation rules. Therefore, the Act authorizes municipalities to exercise their zoning power to regulate cannabis uses, which includes, enforcing its special use regulations. Just like if a dog kennel exceeded the noise limitation in its special use ordinance, the city could revoke the kennel's ordinance. However, the Act does not give cannabis businesses a free pass. Cannabis businesses still must comply with local zoning regulations.

8. You are the City Administrator for Hooverville. The Mayor is very unpopular and he asks you to ban pitchforks, handguns, and other weapons anywhere on the grounds of City Hall. Is the Mayor's request legal?
    a. Yes, it is always legal to ban weapons on city grounds.
    b. No, it is never legal to ban weapons on city grounds.
    c. Yes, but the ban may not apply to concealed carry licensees outside City Hall.
    d. Yes, the inside and outside of City Hall are prohibited areas under Illinois' concealed carry law.

djb6

430 ILCS 66/65- Firearm Concealed Carry Act

The Conceal Carry Act states, "a licensee under this Act shall not knowingly carry a firearm on or into … (5) a building or portion of a building under control of a unit of local government." Therefore, the City can prohibit pitchforks, handguns, and weapons inside City Hall. Anywhere outside the building is not a "prohibited area" under the Concealed Carry Act, so the City cannot prohibit concealed carry licensees from carrying handguns there.

9. The corporate authorities of the Village of Chiberia love the revenue generated from the Village's gaming establishments, but a significant amount of the Village's residents are worried that the gaming establishments are a bad influence of their community. Is there anything the residents can do to stop video gaming, against the wishes of the corporate authorities?
    a. No, Village residents can never ban video gaming in their community.
    b. Yes, a referendum can be placed on ballot to ban video gaming.
    c. Yes, residents can always ban video gaming in their community.
    d. No, a municipality's decision not to ban gaming is always upheld.

gwj3djb13

230 ILCS 40/70- Illinois Video Gaming Act

Even if a municipality decides not to ban video gaming, residents may force their hand. The Illinois Video Gaming Act states, that 25% of the legal voters within a municipality can file a petition within 90 days prior to the next election to have a referendum placed on the ballot asking voters whether video gaming should be banned. If a majority of the voters are in favor of the ban, then video gaming will be prohibited in the community.

10. Vladimir wants to open up an establishment that will have 6 video gaming terminals. He found a vacant spot, next to a small church and across the street from an elementary school, located in his town's busy, downtown area. Will Vladimir be successful?
    a. Yes, the Video Gaming Act allows for 6 terminals in an establishment.
    b. Yes, the Video Gaming Act allows for terminals to be near schools/churches.
    c. No, only the location of the establishment violates the Video Gaming Act.
    d. No, the number of terminals and location violate the Video Gaming Act.

gwj4djb14

230 ILCS 40/25- Illinois Video Gaming Act

The Illinois Video Gaming Act states that a licensed establishment "may operate up to 5 video gaming terminals on its premises at any time." 230 ILCS 40/25(e). Additionally, the Act provides a location restriction, establishing that a video gaming terminal cannot be located within 100 feet of a school or a place of worship under the Religious Corporation Act. 230 ILCS 40/25(h)(ii).

11. The Church of Our Lord has been in operation residential district for ten years. The City of Churchland notified the Church that it needed to comply with the City's zoning ordinances, by applying for a conditional use permit or ceasing operations. The City denied the Church's permit without providing an explanation. Has the City substantially burdened the Church's right to religious exercise?
    a. Yes, the church always wins.
    b. Yes, unless the City can show a compelling interest and it is the least restrictive means.
    c. Yes, these restrictions are never the government's least restrictive means.
    d. No, the Church does not pay any taxes.

dss1

***The Church of Our Lord & Savior Jesus Christ v. City of Markham, Ill.*, No. 15 C 4079, 2015 WL 4994290 (N.D. Ill. Aug. 19, 2015)**

The Religious Land Use and Institutionalized Persons Act (RLUIPA) states, "no government shall impose or implement a land use regulation in a manner that imposes a substantial burden on the religious exercise of a person, including a religious assembly or institution, unless the government demonstrates that imposition of the burden on that person, assembly, or institution – (A) is in furtherance of a compelling governmental interest; and (B) is the least restrictive means of furthering that compelling governmental interest." 42 U.S.C. § 2000cc.

In *The Church of Our Lord & Savior Jesus Christ v. City of Markham, Ill.*, the church filed a lawsuit against the City after the City notified the church that it had to comply with City ordinances, including applying for a conditional use permit, or cease operations. The church applied for zoning relief, but was denied relief by the City. The church argued that the City's denial of its permit was a "substantial burden" on its religious exercise, discriminated against the church, violated the equal terms clause of RLUIPA, among other claims.

The court allowed the church's substantial burden claim to move forward, stating that a land use regulation substantially burdens religious exercise if the regulation "is one that necessarily bears direct, primary, and fundamental responsibility for rending religious exercise-including the use of real property for the purpose thereof within the regulated jurisdiction generally-effectively impracticable." Additionally, a land use regulation can substantially burden religious exercise if the decision maker cannot justify the burden. In this case the Church had been in operation on the same land for ten years without issue.

12. The City of Levyston passed an ordinance setting a December 21, 2015 estimated date of completion for its TIF Redevelopment Plan and TIF District. On December 28, 2015, the City levied and collected taxes. Did the City violate the TIF Act by levying and collecting taxes after the estimated date of completion?
    a. No, an "estimated date" is just that, an estimate.
    b. Yes, an "estimated date" must be the actual date of completion.
    c. Yes, no further activities may be taken after the estimated date.
    d. Yes, an estimated date terminates the TIF district.

dss2

65 ILCS 5/11-74.4-8- Tax Increment Allocation Redevelopment Act
***Devyn Corp. v. City of Bloomington*, 38 N.E.3d 1266 (Ill. App. 4th Dist. 2015) *appeal denied*, (Ill. Nov. 25, 2015)**

The TIF Act enables a municipality to eliminate blighted conditions from within its boundaries by diverting incremental property-tax revenues from taxing bodies, such as school, park, sanitary, and fire districts, located within a proposed tax-increment-financing district. The incremental-property-tax revenues are used to fund public improvements within the TIF district. Pursuant to the Act after a municipality creates a tax district, all increases in the property-tax revenue from properties within the tax district are placed in a special fund and used to pay development expenses within the TIF district. *Devyn Corp. v. City of Bloomington*, 2015 IL App (4th) 140819, ¶ 6-7 (2015).

In *Devyn Corp. v. City of Bloomington*, an Illinois Appellate Court held that the City did not fail to comply with the provisions of the TIF Act. The Act does not define "estimated dates of completion," but rather pursuant to §11-74.4-8 of the Act, a redevelopment plan and tax district terminate only upon the occurrence of a series of events, including (1) the payment of all redevelopment project costs, (2) the retirement of obligations, (3) the distribution of any surplus pursuant to section 11-74.4-8, and (4) the final closing of the books and records of the redevelopment project area. Therefore, that section of the Act supports the conclusion that there is not an arbitrary date which the tax district would cease to exist. As a result, court reasoned that the "estimated date of completion" of a tax increment allocation redevelopment plan is merely an estimate. Therefore, the City could lawfully levy and collect incremental taxes after the estimated date of completion.

13. The City of Sproutsville enacted a weed ordinance, which states, "any person who owns or controls property within the city must cut or otherwise control all weeds on such property so that the average height of such weeds does not exceed ten inches." This ordinance defines a weed as "a wild plant growing where it is not wanted." For violating this ordinance the City can impose a fine of "not less than $600 nor more than $1,200." Are the fines imposed excessive or cruel and unusual under the Eighth Amendment?
    a. Yes, any fine above $200 is unconstitutional.
    b. Yes, a fine of $1,200 is excessive under the Eighth Amendment.
    c. No, the City has a valid interest that justifies the ordinance and its fines.
    d. Yes, the City does not have a valid interest in weed control.

gwj5dss11

Disc. Inn, Inc. v. City of Chicago, 803 F.3d 317 (7th Cir. 2015)

Discount Inn, a business owner in Chicago, sued the City after it was cited under the City's weed and fence ordinances. Discount claimed that the ordinances were unconstitutional on two grounds. First, Discount alleged that the ordinances were unconstitutional as they imposed "excessive fines" in violation of the 8th Amendment. The appellate court rejected this argument, finding that the maximum fine ($1,200) was far from an astronomical fine that would be excessive in the sense of the 8th Amendment, and that Chicago has a valid interest in weed control that justifies an ordinance forbidding all weeds. Second, Discount claimed that the weed ordinance is vague and forbids "expressive activity" protected by the First Amendment. Discount argued that certain native plants might be mistaken for "weeds" based on the definition of weed as "vegetation that is not managed or maintained by the person who owns or controls the property on which all such vegetation is located and which, on average, exceeds ten inches in height." Although, the court acknowledged that the ordinance might be overly broad in scope, it did not accept Discount's argument that the free speech clause protects it from the weed ordinance, stating as follows:

> But the plaintiff's claim that the free-speech clause insulates all weeds from public control is ridiculous...Its weeds have no expressive dimension. The plaintiff just doesn't want to be bothered with having to have them clipped.

Therefore, the court upheld the weed ordinance, while expressing its concerns about the ordinance's enforcement and the difficulty in the interpretation of the City's definition of a "weed." To aid municipalities in creating weed ordinances the court provided an example of what it thinks a weed is: "a wild plant growing where it isn't wanted."

14. After property owners in Sparta County received PUD approval the County replaced a portion of the road leading to the property with a dead end cul-de-sac. Although vehicles can no longer access the property via this route, there is alternate access. The County said the relocation is designed to control traffic. Do the County's traffic control regulations constitute a taking of property requiring just compensation?
    a. Yes, every limitation of access is a compensable taking.
    b. Yes, this taking is a material impairment of direct access.
    c. No, traffic is horrible.
    d. No, this did not materially impair property and no compensation is required.

dss3

***DWG Corp. v. Cty. of Lake*, 39 N.E.3d 1031 (Ill. App. 2d Dist. 2015)**

The owners of a 686 acre property applied for and obtained PUD approval to develop the property as a mixed use residential and commercial development north of Peterson Road and east of Route 60. Shortly after the PUD approval, Lake County undertook a construction project that relocated Peterson Road about 400 feet to the southeast renamed it to Behm Lane, and replaced a portion of the renamed road with a dead end cul-de-sac.

The owners sued, claiming that as a result of the construction project, vehicles could no longer access the new Behm Lane via Route 60, impairing access to the proposed commercial area of the approved development. The owners alleged that the impaired access was an unconstitutional "taking" of their property and they were due compensation.

The county filed a motion for summary judgment arguing that damages that result from the exercise of police power to regulate and control traffic were not compensable under a 1975 Illinois Supreme Court case. The county also argued that there was no "impairment" of access, just a changed traffic pattern. Plaintiffs countered that vehicles no longer had access directly from Peterson Road and there was no direct access to Route 60.

The trial court ruled in favor of the county, finding that since the owners still had access, no damages were due to the owners. The appellate court agreed, holding that the owners were not due any compensation for the change in access. First, the court noted that "[n]ot every limitation of access is compensable." The standard is "material impairment of existing direct access." Because the owners still had access to Behm Lane (former Peterson Road), the County's relocation of that road did not materially impair the owners' property, therefore, the County was not required to provide just compensation for its taking.

15. The City of Gunston adopted an ordinance prohibiting the possession of assault weapons or large capacity magazines. A City resident, Barry Armstrong, owned a banned rifle and large-capacity magazines before the ordinance was in effect and sued the City claiming the ordinance violated his Second Amendment rights. Is the ordinance unconstitutional?
    a. No, it only bans dangerous and unusual weapons not all weapons.
    b. No, local governments can always ban firearms.
    c. Yes, all firearm regulations are unconstitutional.
    d. Yes, the City had no legitimate purpose for the ban.

djb7

***Friedman v. City of Highland Park, Illinois*, 784 F.3d 406 (7th Cir. 2015) *cert. denied sub nom. Friedman v. City of Highland Park, Ill.*, 84 USLW 3079 (U.S. Dec. 7, 2015)**

The City of Highland Park, Illinois, adopted an ordinance prohibiting the possession of assault weapons or large capacity magazines (those that can accept more than 10 rounds). A City resident who owned a banned rifle and several large-capacity magazines before the ordinance took effect sued the City, along with the Illinois State Rifle Association, claiming that the ordinance violated the Second Amendment, as interpreted by the U.S. Supreme Court in *District of Columbia v. Heller* and *McDonald v. City of Chicago*. The City defended its ordinance by arguing that weapons with large-capacity magazines are "dangerous and unusual" under *Heller*.

The Seventh Circuit first held that Heller does not purport to define the full scope of the Second Amendment, nor does it "imperil every law regulating firearms." Second, the Seventh Circuit posed the question as follows:

> Whether a regulation bans weapons that were common at the time of ratification or those that have some reasonable relationship to the preservation or efficiency of a well regulated militia.

The guns and magazines banned by Highland Park were not common in 1791. Moreover, although some of the weapons prohibited by the ordinance are commonly used for military and police functions, the Court held that states (and local governments) should be allowed to decide when civilians can possess military grade weapons. Since Highland Park did not ban other types of weapons (i.e., handguns and most long guns), the ordinance still leaves residents with adequate means of self-defense. The Court also found persuasive studies submitted by Highland Park that a ban on assault weapons reduces the overall dangerousness of crime, and could increase the public's sense of safety. Based on these factors, the Court upheld Highland Park's ordinance.

16. The Town of Gold Rush, Illinois, is attempting to bring in new business to its community by converting existing strip malls into "casino malls," where each neighboring business independently offers a different type of video gaming. Casino Mall LLC submitted its application to the Illinois Gaming Board to obtain a gaming license for one small, five video terminal, café in a strip mall. Will the Illinois Gaming Board grant or deny Casino Mall LLC's gaming license application?
    a. Grant. Gaming establishments may operate up to five terminals.
    b. Deny. The Video Gaming Act was never intended to allow for "casino malls."
    c. Deny. Video café gaming applications are always denied.
    d. Grant. "Casino malls" exist in neighboring areas.

gwj6djb15

230 ILCS 40/25- Illinois Video Gaming Act

Hometown, Illinois attempted to launch a new enterprise of "casino malls," which would use vacant space in existing strip malls to open independent enterprises offering video gaming. Hometown Plaza LLC, Bella's Hometown LLC, and Gigi's Hometown LLC all submitted applications to the Illinois Gaming Board to obtain gaming licenses. The Illinois Gaming Board voted unanimously to reject the applications on the basis that"casino malls" are an effort to create "backdoor casinos" which violate the intent of both the Riverboat Gambling Act and the Video Gaming Act.

Following the denial of their applications, Hometown Plaza LLC, Bella's Hometown LLC, and Gigi's Hometown LLC filed suit against the Illinois Gaming Board, its chairman, board members, and gaming board administrator. The complaint alleges that the license applications were denied because "competitors, owners of other video gaming locations and video gaming chains, mounted a lobbying and public relations campaign to urge the board to deny the applications." This lawsuit seeks to overturn the Gaming Board's decision because (1) the decision was "unauthorized by law, because the Video Gaming Act as actually passed by the Illinois General Assembly, which is the sole source of the Board's powers, does not mention, let alone ban 'video gaming malls;'" (2) the new policy which the Board based its denials "is in fact unlawful;" and (3) the Board violated the Open Meetings Act because the Board's deliberations regarding the denial of the applications could not lawfully occur in closed session.

Additionally, the lawsuit alleges that "there are three licensed video gaming establishment with the Villa DuPage Shopping Center in Village Park and two licensed video gaming establishment that share a common wall and are directly adjacent to one another in a strip mall in Champaign, Illinois."

The Board's contention that "casino malls" violate the Riverboat Gambling Act and the Video Gaming Act are evidenced by a letter from state Rep. Robert Rita, D-Blue Island, which states that he and his legislative colleagues never envisioned the creation of casino malls when they passed the Video Gaming Act.

Under the Video Gaming Act, up to five video machines can be installed at any site that is licensed. Sites include, restaurants, taverns, fraternal and veteran halls and, with increasing

frequency video cafés. The video cafes are a relatively new development that tends to cater towards women by offering wine, coffee, tea and small snacks along with video games.

17. The City of Loverville wanted to reduce the number of adult uses by enacting an ordinance restricting the location of adult businesses to certain districts and requiring a conditional use for its operation. Do these restrictions violate the First Amendment?
    a. **Yes, these restrictions are a prior restraint on expressive conduct.**
    b. No, the City has an overriding interest in protecting children from obscene images.
    c. No, the City can always restrict adult uses.
    d. Yes, local governments can never limit adult uses.

djb8

Green Valley Investments v. Winnebago Cty., Wis., 794 F.3d 864 (7th Cir. 2015)

Stars Caberet is a nude dancing establishment in Neenah, Wisconsin. When Stars opened in 2006, the County had a zoning ordinance that restricted the location of adult businesses to certain zoning districts and required a conditional use for their operation. In Stars' first lawsuit against the County, it challenged the constitutionality of the 2006 ordinance. During the pending lawsuit, the County amended the ordinance and Stars' dismissed its lawsuit. However, Stars brought a second lawsuit to challenge the 2007 amendment, and the court enjoined the County from enforcing the conditional use requirement, but upheld the remainder of the ordinance based on the ordinance's severability provision.

Following the decision in the second lawsuit, the County informed Stars that it could not continue its operations because the business was never legal. Stars subsequently filed a third lawsuit asking the judge to declare its operation lawful under federal law or, in the alternative, a legal nonconforming use under state law. The district court ruled against Stars, finding that notwithstanding the ordinance's illegality, the business as unlawful when it opened in 2006.

On appeal, the Seventh Circuit noted that the County's ordinance was an illegal prior restraint on expressive speech in violation of the First Amendment because it requires the applicant to seek permission to engage in expressive conduct and granted the County too much discretion to grant or deny permission according to amorphous standards. However, the Court noted that the ordinance included a severability provision, which could allow a court to sever the unlawful provisions of the ordinance from the remainder of the ordinance. Therefore, the Seventh Circuit held that the district court should have dismissed the state law claims because the application of the severance provision is a question of state law, especially where local land use matters are often resolved in state court, absent an overriding federal-law question. Accordingly, the Seventh Circuit dismissed the state law claims, so that the parties may (if they wish) pursue them in state court.

18. In an effort to attract more fans to its football games, Bayside High School installed bleachers on its grounds, without first receiving the City's approval. The school district believes that it does not have to comply with the City's zoning regulations. Is Bayside High School exempt from local zoning and land use regulations?
    a. Yes, school districts are always excluded from local regulation.
    b. Yes, home rule municipalities cannot regulate land use through zoning.
    c. No, school districts are never excluded from local regulation.
    d. No, unless school districts are expressly exempted by statute.

dss4

Gurba v. Cmty. High Sch. Dist. No. 155, 40 N.E.3d 1 (Ill. 2015)

In *Gurba v. Community High Sch. Dist. No. 155*, a local high school installed bleachers on its grounds without going through the zoning process. The high school argued that it was not subject to local zoning. Both the city and neighboring property owners challenged the school's position in court, and a circuit court and appellate court ruled in favor of the city. The case was appealed to the Illinois Supreme Court.

The Court acknowledges that the case turns on the issue of whether a school district is subject to local zoning and land use regulations. The Court first notes that municipalities have express statutory authority to regulate all land uses within their territory, subject only to "express statutory exclusions." The Court identified a few of these exclusions, including restrictions on the ability of municipalities to regulate political signs and ham radio antennas. However, the Court noted that there is no statutory provision restricting the authority of a municipality to regulate zoning or storm water management on school property. As a result, the Court held that under the plain terms of the Municipal Code, school property is subject to municipal zoning laws. The Court also stated that the City had broad home rule authority to zone and regulate land uses.

The Court rejected the school district's argument that zoning and land use regulations interfere with the district's statutory authority over public education, as well as its attempt to extend the statutory exemption from local building regulations to zoning and land use regulation.

The Court reasoned:

> As a home rule municipality, the City has the power to regulate land use within its jurisdiction through zoning. There is no statute which exempts school district property from the exercise of the City's zoning laws. Accordingly, we hold that the bleacher construction project undertaken by the Board and the District is subject to the City's zoning and storm water ordinances.

19. In an effort to stabilize beer prices, the Beer Marketing Act of 2015 requires that all brewers set aside 30% of their beers for a governmental beer reserve, without compensation. Beers in the reserve will be sold in noncompetitive markets. Net proceeds will be distributed back to the brewers. Is this program a taking of property requiring just compensation?
    a. No, the government can always do this to regulate commerce.
    b. No, brewers receive compensation through the net proceeds.
    c. Yes, physical taking of personal property requires just compensation.
    d. Yes, only the physical taking of real property requires just compensation.

dss5

Horne v. Dep't of Agric., 135 S. Ct. 2419 (2015)

In *Horne v. Department of Agriculture,* the U.S. Supreme Court ruled against the government in a Fifth Amendment takings case. This case involved a challenge to the federal government's raisin set-aside program that requires raisin growers to set aside a particular percentage of their crops "for the account of" the government. The purpose of the set-aside program is to stabilize raisin prices. Raisin growers challenged the program, arguing that it constituted an illegal taking without just compensation under the Fifth Amendment of the U.S. Constitution. The Supreme Court agreed, finding that the set-aside was a "physical appropriation" of the growers' property that constitutes a taking. As a result, the government must pay the growers just compensation for the taking.

"The government has a categorical duty to pay just compensation when it takes your car, just as when it takes your home." Based on the holding in *Horne*, the government's duty to pay just compensation under the Fifth Amendment applies to personal property as well as real property.

20. Steven Everglade sought to develop his property located in a protected wetland zone. In order to obtain a permit for his proposed development, he was required to restore 50 acres of wetlands on a parcel 4.5 miles away and Everglade was asked to perform on-site mitigation through a conservation easement on his property. Are the permit conditions a taking requiring just compensation?
    a. No, if there is a nexus between property and social costs of owner's proposal.
    b. No, a dedication of land was not required.
    c. Yes, a permit was denied because owner refused to turn over a property interest.
    d. No, wetlands are useless.

dss6

Koontz v. St. Johns River Water Mgmt. Dist., 133 S. Ct. 2586 (2013)

The U.S. Supreme Court held that the *Nollan/Dolan* takings requirements apply even when a governmental body denies a permit, and where the government imposes monetary exactions

In 1994, Koontz sought to develop land lying within a Riparian Habitat Protection Zone in Florida. Because most of the property was wetlands, Koontz was required to obtain a permit from the St. Johns River Water Management District. In order to mitigate the impact from the development, the District required Koontz to reduce the scale of his proposed development; restore and enhance at least 50 acres of wetlands on a parcel 4.5 miles away; or perform similar off-site mitigation at a site seven miles away. Koontz was also asked to perform on-site mitigation through a conservation easement or deed restriction on the rest of his property. Koontz rejected each of the District's proposals and filed suit, arguing that the District was liable for a taking of his property requiring compensation. The District argued that the takings analysis of *Nollan* and *Dolan* do not apply to the denial of Koontz's permit because no dedication of land was required and no damages were incurred.

The case made its way to the Florida Supreme Court, which held that the takings test adopted by the U.S. Supreme Court in the seminal *Nollan/Dolan* cases did not apply because (1) the District did not impose conditions on approval and (2) there is a distinction between a demand for real property and a demand for money.

The Supreme Court disagreed with the District, and reversed the Florida Supreme Court. First, the Court summarized the *Nollan* and *Dolan* cases as protecting the Fifth Amendment right to just compensation for property the government takes from a land owner as part of the land use permitting process. The Court acknowledged that a government can avoid the payment of just compensation if it can establish a nexus and rough proportionality between the property that the government demands and the social costs of the owner's proposal. The Court extended the *Nollan/Dolan* test beyond the traditional situation where a government approves with conditions to now apply to a situation where a government denies the permit because the owner refuses to turn over property.

In the Court's opinion, the owner forfeits a constitutional right whether it is coerced into accepting a condition or is denied benefits for refusing to accept that condition. The Court

emphasized that a contrary rule would enable a government to evade the takings requirements by imposing conditions precedent to permit approval - i.e., a permit is *denied until* certain conditions are met. Under the Court's analysis, therefore, a taking can occur even where no property of any kind was actually taken. The Court's view is that a constitutionally cognizable injury occurs when a property owner refuses to give up a constitutional right in the face of government "coercive pressure."

Finally, the Court overturned the Florida Supreme Court's dismissal of the claim because the District asked Koontz to contribute money rather than give up an easement on his land. The Court held that "in lieu" fees are functionally equivalent to other types of land use exactions, and must satisfy the nexus and rough proportionality requirements of *Nollan* and *Dolan*. The Court did not apply *Penn Central's* regulatory taking test, and instead chose to apply a *per se* takings test because it found a direct link between the District's demand for money and Koontz's property interest. The Court rejected the District's argument that its ruling would restrict a government's ability to impose property taxes or user fees without implicating the takings clause.

21. The Town of Flavor Country, a home rule municipality, wants to pass an ordinance prohibiting the sale of all e-cigarette flavors other than grape. Does the Town have authority to enact such a regulation?
    a. No, e-cigarette flavors can never be regulated.
    b. Yes, e-cigarette flavors can always be regulated.
    c. Yes, if the restriction is rationally related to the Town's interest.
    d. No, this is an arbitrary ban.

gwj7dss12

Ill. Const. art. VII, § 6(a)- Powers of Home Rule Units

A city's authority to regulate e-cigarettes stems from its authority to protect the public's health, safety, and welfare provided under the Illinois Constitution, Article VII, Section 6(a). For this prohibition to be valid the County would have to show that vapor flavors other than grape are more harmful than grape, therefore, creating a rational basis for the regulation. Alternatively, if flavors other than grape are disproportionately enjoyed by minors, that may be a rational basis as well. However, the city needs to do its homework first; the city does not want to draw an arbitrary line between flavors. An easier approach may be to ban all fruit flavors and sweet flavors because those are more likely to be directed at minors, which could lead to tobacco use and other substance use in the future.

22. Beckman, a general contractor, provided the Village of Butkus with performance bonds, but not payment bonds, to secure the cost of public improvements to be dedicated to the Village in a residential development. Beckman went bankrupt without paying subcontractor Cubit, and Cubit argues the Village was required to obtain payment bonds under the Public Bond Construction Act. Can Cubit recover from the Village based on the alleged failure to comply with the Act?
    a. No, the Village's performance bonds satisfied the Act.
    b. No, the Act does not apply to the construction of public improvements.
    c. Yes, Cubit can recover from the surety and the Village.
    d. Yes, but the new Athletic Director will fire Cubit.

dss7

Lake County Grading Co., LLC v. Vill. of Antioch, 19 N.E.3d 615 (Ill. 2014)

The Village of Antioch approved two residential developments proposed by Neumann Homes. Conditions were imposed that required Neumann to construct certain public improvements to be dedicated to the Village. The approvals also required Neumann to provide the Village with surety bonds to secure the cost of the improvements. Neumann entered into various contracts for that work, including a contract with Lake County Grading Company to perform grading work. Neumann filed for bankruptcy, and never paid Lake County for the grading work it completed. Lake County Grading filed claims against the surety bonds provided by Neumann to secure the work. However, because the language of the surety bonds guaranteed performance by Neumann, but were silent regarding payments to subcontractors, like Lake County Grading, the surety companies refused to pay the subcontractor.

Lake County Grading then filed suit against the Village, claiming that the Public Construction Bond Act required the Village to obtain both a performance bond to secure the work and a payment bond to protect subcontractors. According to Lake County Grading, the Village's failure to comply with the payment bond requirement of the Act rendered it liable for third party beneficiary breach of contract. The circuit court granted summary judgment to Lake County Grading on this theory, and the Village appealed. The appellate court also found in favor of Lake County Grading, holding that because the Village had failed to obtain a payment bond as required under the Public Construction Bond Act, Lake County Grading could assert a third party beneficiary claim against the Village.

The Village again appealed the adverse ruling to the Illinois Supreme Court. The Supreme Court interpreted the Public Construction Bond Act more favorably to the Village, finding that the Village's requirement that Neumann Homes post a performance bond satisfied the Public Construction Bond Act because the statute deems payment to be part of a bond for public improvements under the Act. As a result, Lake County Grading's only recourse is against the bond company, not the Village. Unfortunately for Lake County Grading, the six (6) month period to file claims under the bond passed so Lake County Grading is left without a remedy.

The Supreme Court's ruling therefore, provides protection to municipalities that fail to obtain both a payment and performance bond in connection with public improvement contracts.

However, it is important to note that municipalities that fail to obtain any bond, either performance or payment, could be faced with a third party beneficiary claims for payment.

23. Homeowners in Bamaland subdivision would like to detach their properties from Dixieland School District and become annex to Crimson School District. At the detachment hearing, Bamaland produced uncontroverted evidence as to shorter travel times and distances to schools, improved property values, and other factors. Should the Bamaland homeowners be allowed annex to Crimson School District?
    a. Yes, the only evidence offered satisfied the disconnection factors.
    b. No, the educational welfare of the students is the only factor.
    c. Yes, Dixieland is not a very good school district.
    d. No, Bamaland would have to show the travel times were much shorter.

dss8

***Merchant v. Regl. Bd. of Sch. Trustees of Lake County*, 19 N.E.3d 688 (Ill. App. 2d Dist. 2014) *appeal denied sub nom. Merchant v. Regl. Bd. of Sch. Trustees Lake County*, 23 N.E.3d 1202 (Ill. 2015)**

In *Merchant v. Regional Board of School Trustees of Lake County*, homeowners filed a petition to disconnect their subdivision from one school district and annex it to another school district under a provision of the Illinois School Code. The petition had been signed by at least 2/3 of the voters in the subdivision. The Lake County regional board of school trustees conducted a public hearing, and the petitioners presented evidence that the change in schools would provide an educational advantage to the students, would increase home values in the subdivision, and would not be a financial detriment to the districts. At the conclusion of the hearing, the board denied the petition. The board based its ruling on a number of factors, including that the change would not decrease travel time for students and that the subdivision did not have a "community of interest" with the new schools.

The subdivision appealed to the trial court, which reversed the board's decision, and disagreed with the board's findings. Specifically, the trial court determined that the new schools would be closer and would have a safer route. The trial court also found that the board erred in failing to consider the petitioners' preferences.

On appeal, the appellate court affirmed the trial court, agreeing that the regional board erred in denying the subdivision's petition to change school districts. The appellate court went into great detail about the detachment process, and the standards that petitioners must establish under the School Code for detachment. After weighing all of the factors, the appellate court determined that the petitioners established sufficient evidence in favor of their application to change school districts, and the regional board erred in denying that petition.

24. The Christmas Helpers is an organization in the City of Carolina. Christmas Helpers places bins around Carolina to re-gift to people in need. Recently, Carolina has passed an ordinance to reduce blight by banning donation bins. Carolina believes that donation bins create a lot of clutter and are often mistaken for trash bins. Christmas Helpers believes this ban infringes on their First Amendment right to protected speech because the bins are used to voice their support of helping others. Will Carolina's recent ban be upheld by a court?
    a. **No, unless it has a compelling city interest and it is the least restrictive means.**
    b. No, cities can never ban donation bins.
    c. Yes, cities can always ban donations bins.
    d. Yes, this ordinance satisfies rational basis review.

djb9

***Planet Aid v. City of St. Johns, MI*, 782 F.3d 318 (6th Cir. 2015)**

In *Planet Aid v. City of St. Johns*, St. Johns, a city in Michigan adopted an ordinance to reduce blight by banning off-site donations boxes. The ordinance provided that a "donation box" as "an outdoor unattended receptacle designed with a door, slot, or other opening that is intended to accept donated goods or items." Further, the ban stated, "No person, business or other entity shall place, use or allow the installation of a donation box within the City of St. Johns."

Following the passage of the ban, the City removed two bins placed by Planet Aid. Following the removal of the bins, Planet Aid filed a lawsuit alleging that the City violated Planet Aid's First Amendment rights because it infringed on Planet Aid's protected speech of charitable solicitation and giving.

The district court granted the plaintiff's motion for summary judgment, deciding that, "Planet Aid's operation of donation bins to solicit and collect charitable donations qualifies as protected speech under the First Amendment," thus the ordinance was subject to strict scrutiny. The case was then appealed to the Sixth Circuit with upheld the district court's issuance of the temporary restraining order. The appellate court found that the ordinance "clearly regulates protected speech on the basis of its content. The ordinance does not ban or regulate all unattended, outdoor receptacles. It bans only those unattended, outdoor receptacles with an expressive message on a particular topic— charitable solicitation and giving" – an expression that the U. S. Supreme Court has found "worthy of strong constitutional protection." Ultimately, the ordinance was subject to strict scrutiny and the City could not overcome such scrutiny.

25. Pizza Planet is a religious group in the Town of Spaceport. Pizza Planet does not have its own church so it uses different locations to host its services. Thus, Pizza Planet places signs all around Spaceport to tell its members where the services will be held. Recently, Spaceport passed an ordinance banning the use of temporary directional signs, such as Pizza Planet's, but still allowed temporary political signs. Does Spaceport's regulation violate Pizza Planet's right to freedom of speech?
    a. No, Spaceport has a legitimate interest and the ban is the least restrictive means.
    b. No, on its face the signs are content-neutral.
    c. Yes, on its face the signs are content-based.
    d. No, this ordinance satisfies rational basis review.

dss9

Reed v. Town of Gilbert, Ariz., 135 S. Ct. 2218 (2015)

In *Reed v. Town of Gilbert, Arizona*, the Good News Community Church did not have a regular site for their services, so to inform the public of the locations of the services they posted 15-20 temporary signs around the Town that included the name of the church, the time, and the location of the upcoming services. The church was cited by the Town for violating the Town's sign code, but the church sued claiming that the sign code violated their freedom of speech rights under the First Amendment. The Ninth Circuit Court of Appeals ruled in favor of the Town and held that the sign-code was a content neutral regulation. However, the U.S. Supreme Court disagreed and found that the sign regulations were content-based.

According to the Supreme Court, a government regulation of speech is content based if a law applies to particular speech because of the topic discussed or the idea or message expressed. Thus, a court must consider whether a regulation of speech "on its face" draws distinctions based on the message a speaker conveys. According to the Court, the Town's sign code is content based on its face because the Town treats temporary directional signs, political signs, and ideological signs (all temporary signage) differently, depending "entirely on the communicative content of the sign." For example, ideological signs (signs communicating noncommercial messages that are not directional political, garage sale, or construction signs) are treated most favorably of the three categories. Political signs, on the other hand, are treated somewhat less favorably (stricter time limits and size restrictions) than ideological signs. And directional signs relating to events are treated even less favorably, with much more restrictive size and time restrictions. In the Court's view, singling out a specific subject matter for differential treatment, as evidenced by the way the Town treated these three categories of signs, is the perfect example of content-based discrimination.

Because the sign code imposes content-based restrictions on speech, they could only be upheld if they can survive strict scrutiny. That means that the Town had to prove that the restriction "furthers a compelling interest and is narrowly tailored to achieve that interest." The Town's two arguments in favor of a governmental interest (aesthetics and traffic safety) were not, according to the Court, a sufficiently compelling reason to treat directional event signs less favorably than other temporary signs. For example, there was no evidence that the type of directional signs placed by the church posed any greater threat to traffic safety than ideological or political signs.

There was also no evidence that limiting directional signs but allowing larger ideological signs for a longer period of time would protect the aesthetics of the Town.

The opinion raises a number of questions, including what a municipality can legally do to regulate signs. The majority opinion does not provide much guidance, except to say that its decision "will not prevent governments from enacting effective sign laws." The Court stated that the Town has a variety of "content-neutral" options available to protect aesthetics and traffic safety, such as regulating the size, building materials, lighting, and other aspects of signs that have nothing to do with the sign's message. The Court also noted that the Town could completely ban signs from public property, so long as it is done in an evenhanded manner. What the Town could not do, however, was treat similar signs differently based on the message on the sign.

26. In a failed subdivision in the Village of Brooklyn, the plat of the subdivision notes the roads are "hereby dedicated" to the Village, but the Village did not expressly accept the dedication because the subdivision was incomplete. Roc Nation Bank filed a foreclosure action on the subdivision, so the Village held a special meeting and adopted a resolution accepting the roads. Can the Bank continue with its foreclosure of the roads in the subdivision?
    a. Yes, the Bank did not consent to the dedication and the Village waited too long to accept the roads.
    b. No, the Bank impliedly consented to the dedication and the Village timely accepted the roads.
    c. Yes, the Bank needs money.
    d. No, Brooklyn is full of hipsters now.

djb10

***Republic Bank of Chicago v. Vill. of Manhattan*, 32 N.E.3d 1141 (Ill. App. 3d Dist. 2015) *appeal denied*, 39 N.E.3d 1011 (Ill. 2015)**

In *Republic Bank of Chicago v. Village of Manhattan*, a mortgagee brought foreclosure actions against the defendants to foreclose on roads and outlets in two failed subdivisions. The roads were identified as "hereby dedicated" and "heretofore dedicated" to the Village of Manhattan. Further, there were easements that were again "reserved for and granted to the Village of Manhattan." The Village filed a motion to dismiss stating that the roads and common areas were dedicated to the Village and the Bank had consented to the dedication of the roads and common areas. The trial court granted the Village's motion to dismiss, finding that the dedication in the plats and the Bank's acknowledgement of the plats amounted to a conveyance in fee simple as donated to the public.

The Bank appealed on the grounds that the plat did not show intent to donate the property for the public and the Village's resolution accepting the property was untimely. Ultimately, the Court ruled that when the Bank recorded and executed the mortgage releases on the lots, the Bank impliedly consented to the entire plats including the streets and outlots. Further, the Court provided that once the Bank executed the mortgage releases, it could not revoke its assent to the dedication of the streets and outlots on the plats and that the Bank cannot deny the validity of dedication of the streets and common areas. As such, the court affirmed the ruling of the lower court.

27. The Village of Denver entered a 2005 annexation agreement with developer John for a residential subdivision, upon the Village's approval of John's development plan. If the property was not developed within 5 years of annexation, the agreement allowed the Village to rezone and disconnect the property. No development occurred, but in 2015, John submitted two development plans, both of which the Village denied. One month later, the Village rezoned and disconnected the property. Did the Village violate its contractual duty of good faith and fair dealing?
    a. No, the Village's right to rezone and disconnect was triggered in 2010.
    b. Yes, John had a vested right to develop the property in good faith reliance on the annexation agreement.
    c. No, the Village can always rezone and disconnect.
    d. No, that sounds made up.

dss10

***Reserve at Woodstock, LLC v. City of Woodstock*, 958 N.E.2d 1100 (Ill. App. 2d Dist. 2011)**

In *Reserve at Woodstock, LLC, v. City of Woodstock,* the Illinois Appellate Court upheld a trial court's ruling that a developer had a vested right to develop a 20-lot residential subdivision and ordered the City to approve the development plans. The court also invalidated the City's rezoning and disconnection ordinances, finding that the City violated its duty of good faith and fair dealing under the annexation agreement.

The annexation agreement in question had been approved in 1993, with a 20 year term. However, no development occurred on the property for a period of 10 years. In 2003, the plaintiff, Reserve, submitted its plans for approval of a 26-lot subdivision. The Plan Commission recommended denial of the submitted plans because the annexation agreement only allowed for the development of 20 lots. Three years later, Reserve submitted plans for a 20-lot subdivision. The Plan Commission recommended approval of the revised plans, but the City Council denied Reserve's application.

Reserve filed suit against the City in October of 2006. One month later, the City rezoned the property to an agricultural zoning district and disconnected the property in September 2007. The trial court ruled in favor of Reserve on all of its claims.

The Appellate Court determined that Reserve's case turned on an interpretation of two somewhat conflicting provisions in the annexation agreement. The first provision prohibited the municipality from rezoning the property during the life of the agreement. The second provision provided that if the property was not developed within 5 years of annexation, the municipality had the right to rezone and disconnect the property. The City claimed that it had an absolute right to rezone and disconnect the property under the second provision. Reserve claimed that the City's right to rezone was restricted by its contractual duty of "good faith and fair dealing."

The appellate court agreed with Reserve, finding that the City violated its duty of good faith and fair dealing where it waited to rezone and disconnect the property until more than 7 years after the "right to rezone and disconnect" provision of the annexation agreement had been triggered and only after Reserve had submitted development plans for approval. The court also found that

Reserve had a vested right to the approval of its plans for a 20-lot subdivision, based on the substantial expenditures it made in good faith reliance on the zoning and annexation agreement.

28. Lloyd purchased 600 acres of land that he wanted to develop in the City of Christmas. The City responded with a one year moratorium which prevented Lloyd from developing the subdivision. Following the expiration of the moratorium, Lloyd attempted to resubmit his proposal five additional times. After each submission, the City amended its zoning regulations forcing Lloyd to resubmit his proposal to comply with the amendments. Are the City's repeated amendments a taking of property requiring just compensation?
    a. **Yes, the City's actions were unfair, unreasonable, and in bad faith.**
    b. No, the City has an unfettered right to continuously rezone.
    c. No, the City's actions were fair, reasonable, and in good faith.
    d. Yes, the City is always required to provide just compensation.

gwj8dss13

Sherman v. Town of Chester, 752 F.3d 554 (2d Cir. 2014)

In *Sherman v. Town of Chester*, Steven Sherman purchased 400 acres of property for $2.7 million in 2000. He applied for subdivision approval, but the Town put in place a moratorium that prevented him from developing. After the moratorium expired, the Town enacted a new zoning ordinance that required him to revise and resubmit his development plan. He resubmitted his application, only to have the Town again amend its zoning regulations. The cycle continued for ten years - each time he resubmitted a plan based on an amended zoning ordinance, the Town would amend its zoning ordinance. In 2010, Sherman filed suit against the Town arguing a takings claim because he had spent $5.5 million on top of the initial $2.7 million for the land, and was facing foreclosure and personal bankruptcy as a result of the Town continuously rezoning, therefore, denying his redevelopment plans.

The federal district court ruled against Sherman, finding that his takings claim was not ripe under *Williamson County*. He appealed to the Second Circuit Court of Appeals, which reversed, concluding that Sherman was not required to obtain a final decision from the Town because it would have been futile, based on the Town's use of repetitive and unfair procedures over a 10 year period to avoid making a final decision on Sherman's land development proposal. The court also rejected the Town's argument that Sherman failed to meet the second prong of the ripeness test by bringing a just compensation claim in state court, finding that it was the Town, not Sherman, who removed the case to federal court.

After finding the case ripe for adjudication, the court then addressed the merits of Sherman's takings claim. Applying the *Penn Central* analysis of a non-categorical taking, the court determined that Sherman had stated a takings claim against the Town, finding the Town's actions in this case to be "unfair, unreasonable, and in bad faith." Thus, the district court's dismissal of his claim was improper, and the court remanded the case back to the district court for further proceedings.

29. The Village of Soy annexed three parcels formerly in the Lima Library District. Soy had a public library of its own, but Lima and the county clerk refused to disconnect the parcels from the District, claiming that the Village did not follow the statutory notice procedures for annexation and that the land should stay in the Lima Library District. The Village filed a lawsuit seeking to compel the disconnection, one-year after the annexation to the Village. Is Lima's defense barred by the one-year statute of limitations?
    a. Yes, the statute of limitations bars defenses, but not claims.
    b. No, the statute of limitations bars claims, not defenses.
    c. Yes, the statute of limitations bars claims and defenses.
    d. No, but the Village's claim is barred by the statute of limitations.

gwj9dss14

***Stivers v. Bean*, 5 N.E.3d 196 (Ill. App. 4th Dist. 2014)**

In *Stivers v. Bean*, the Village of Forsyth filed a lawsuit to disconnect property from a library district after the Village had annexed those parcels. The library district responded that because the village failed to follow all of the required statutory procedures for annexation, the parcels should remain within the library district's jurisdiction. Specifically, the district claimed that the village failed to file affidavits that it had served the library district trustees with the statutorily required notices. The village argued that the district's defenses were barred by the one-year statute of limitations contained in Section 7-1-46 of the Illinois Municipal Code.

The trial court agreed with the village, finding that the district was barred from raising procedural deficiencies as a defense after the one year annexation statute of limitations had expired. On appeal, however, the appellate court reversed, finding that statute of limitations bar stale claims, not defenses based on clear language in the statute that bars the commencement of an action to contest an annexation but makes no mention of defending against such a challenge.

30. The Village of Cornville adopted an ordinance that declared commercial farming within the Village a nuisance. James, a local farmer continued to operate his 60 acre farm, which has been in operation for over 50 years. Although only 5 acres of James' farm is located within the Village, the Village cited James under the nuisance ordinance. The Village went to court and requested an injunction against James. Does the Village's commercial farming nuisance ordinance violate Illinois' right to farm statute?
    a. No, the right to farm statute does not apply.
    b. No, the Village can always regulate farming nuisances.
    c. Yes, the right to farm statute preempts the Village's ordinance.
    d. Yes, the Village can never regulate farming nuisances.

gwj10dss15

***Vill. of LaFayette v. Brown*, 27 N.E.3d 687 (Ill. App. 3d Dist. 2015) *appeal denied*, 32 N.E.3d 678 (Ill. 2015)**

In *Village of La Fayette v. Brown*, the Village adopted an ordinance that declared commercial farming within the Village's boundaries to be a nuisance. Shortly after adopting the ordinance, the Village brought a code violation action against the Browns, the new owners of 57 acres of property on which they were operating a commercial farm. Out of the 57 acres, 6 acres of the farmland were located in LaFayette. The Village alleged in its complaint that the commercial farming of the land was a nuisance, in violation of the new ordinance.

The trial court granted the Village's request for an injunction against the Browns, ordering the Browns to stop engaging in commercial farming on their property within the Village. The court rejected the Browns' argument that farming is protected by the Farm Nuisance Suit Act, a state statute.

On appeal, the appellate court vacated the judgment against the Browns, holding that the Farm Nuisance Suit Act preempted the Village's ordinance. Specifically, that Act provides as follows:

> No farm or any of its appurtenances shall be or become a private or public nuisance because of any changed circumstances in the surrounding area occurring after the farm has been in operation for more than one year, when such farm was not a nuisance at the time it began operation, provided that the provisions of this Section shall not apply whenever a nuisance results from the negligent or improper operation of any farm or its appurtenances.

The court noted that the purpose of the statute is to protect and preserve farming uses because "Illinois is an agricultural state." Here, the land had been used for commercial farming for decades, and the use had not changed - only the ownership of the property - so the clear language of the statute protected the commercial farming use. In short, the Village's nuisance ordinance was preempted by state statute, and cannot be enforced against the Browns.

31. The Village of Specialville and the owners of 200 acres of undeveloped land entered into an annexation agreement to develop a residential subdivision. The annexation agreement required the Village to install a sewer main to the new development, with late fees of $300 per day if the Village did not finish on time. The Village did not finish on time, but argued that the late fees are void because no appropriations were made prior to the agreement. Is the Village liable for the late fees?
    a. No, state law requires a prior appropriation.
    b. No, the Village can never approve an agreement containing a late fee penalty.
    c. Yes, nonpayment of the late fee is unconscionable.
    d. Yes, the Village deserves to be punished.

gwj11dss16

Vill. of Freeburg v. Helms, 2013 IL App (5th) 120288-U

In 2002, a municipality and owners of 145 acres of undeveloped agricultural land entered into an annexation agreement to provide for the annexation and development of the property as a residential subdivision within the municipality. Pursuant to the annexation agreement, the Village agreed to install a sewer main with sufficient capacity to serve 450 homes, including a lift station if necessary. The agreement provided that the sewer line would be constructed within 12 months of the completion of a road widening project of nearby Illinois Highway 15. The agreement provided a penalty provision requiring the Village to pay a late fee in the amount of $300 per day.

In 2011, the Village filed a complaint for declaratory judgment with the circuit court seeking a determination of its obligations under the annexation agreement. The Village acknowledged that the road widening project had been completed in 2009, and that the property owners had sent several requests to the Village for payment of the $300/day penalty fee. Shortly thereafter, the owners filed a counterclaim based on breach of contract.

The Village argued that the owners' counterclaim should be dismissed because the Village had not made a "prior appropriation" of the funds necessary to construct the sewer project. The Village's argument was based on a provision of state law, 65 ILCS 5/8-1-7(a), that prohibits the Village from making any contract for the expenditure of Village funds unless a prior appropriation for that expense has been made. That statute also provides that any contract made without a prior appropriation is null and void. The trial court agreed with the Village, and dismissed the case.

On appeal, the court reviewed the Village's appropriation ordinances and determined that no prior appropriation had been made for the sewer project. Pursuant to state law, therefore, the annexation agreement obligation to construct the sewer line could not be enforced against the Village because the Village lacked authority to approve the annexation agreement without the prior appropriation. The court rejected the owners' argument that declaring the annexation agreement obligation void was "unconscionable," finding that the promise made by the Village was expressly forbidden by Illinois law.