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July 18, 2017

Mr. Michael McCreery
United Counties Council of Illinois
217 E. Monroe, Suite 101
Springfield, IL 62701

Re: Forest Preserve District Compliance with Zoning Laws

Dear Mike:

Issue:

Must forest preserve districts comply with county zoning ordinances?

Analysis:

A prior opinion of the Illinois Attorney General (“AG”) has previously addressed this subject.¹ Specifically, the AG reviewed whether property owned by the Lake County Forest Preserve was subject to Lake County zoning ordinances.² According to the AG, county zoning ordinances are not applicable to uses made of forest preserve districts property within a county, so long as such uses are consistent with the forest preserve district’s statutory mandate.³ However, such a rule only applies where there is irreconcilable conflict between local regulations and a clear statutory mandate.⁴ In other words, where the two are not irreconcilable, an attempt should be made to give effect to both the forest preserve district’s statutory mandate and the local zoning regulation.⁵

¹ See Ill. Atty. Gen. Op. No. S-79-1421 (1979), p. 1.

² *Id.*

³ *Id.* at p. 5.

⁴ *Id.* at p. 6.

⁵ *Id.* at p. 5.

Under Illinois law, forest preserve districts are empowered to acquire land and create forest preserves. Section 5 of Downstate Forest Preserve District Act (“Act”), pertaining to the creation and management of forest preserve districts in counties having a population of less than 3,000,000,⁶ provides, in relevant part, the following:

Any forest preserve district organized under this Act shall have the power to create forest preserves, and for that purpose shall have the power to acquire in the manner hereinafter provided, and hold lands containing one or more natural forests or parts thereof or land or lands connecting such forests or parts thereof, or lands capable of being forested, or capable of being restored to a natural condition, for the purpose of protecting and preserving the flora, fauna, and scenic beauties within such district, and to restore, restock, protect and preserve the natural forests and such lands together with their flora and fauna, as nearly as may be, in their natural state and condition, for the purpose of the education, pleasure, and recreation of the public.⁷

Section 6 of the Act, related to the acquisition of property by a forest preserve district, provides:

Any such District shall have power to acquire lands and grounds for the aforesaid purposes by lease, or in fee simple by gift, grant, legacy, purchase or condemnation, or to acquire easements in land, and to construct, lay out, improve and maintain wells, power plants, comfort stations, shelter houses, paths, driveways, public roads, roadways and other improvements and facilities in and through such forest preserves as they shall deem necessary or desirable for the use of such forest preserves by the public.⁸

Section 5-12001 of the Counties Code, entitled “Authority to regulate and restrict location and use of structures,” states, in pertinent part, the following:

[T]he county board or board of county commissioners, as the case may be, of each county, shall have the power to regulate and restrict the location and use of buildings, structures and land for trade, industry, residence and other uses which may be specified by such board, to regulate and restrict the intensity of such uses, to establish building or setback lines on or along any street, traffic[]way, drive, parkway or storm or floodwater runoff channel or basin outside the limits of cities, villages and incorporated towns which have in effect municipal zoning ordinances.⁹

⁶ 70 ILCS 805/.01.

⁷ 70 ILCS 805/5.

⁸ 70 ILCS 805/6.

⁹ 55 ILCS 5/5-12001.

As observed by the AG in its opinion, if the scope of section 5-12001 of the Counties Code was construed in such a way as to apply to forest preserve districts, then “a great deal of the power to decide the location and nature of forest preserves would be in the hands of the counties, and not the forest preserve districts.”¹⁰ Such an interpretation would render the grants of power to the forest preserve districts found in sections 5 and 6 of the Act meaningless, and Illinois courts have held that interpretations that render any portion of a statute meaningless should be avoided.¹¹

However, the AG also observed that a forest preserve district cannot proceed in complete disregard of other lawful county ordinances.¹² For example, while, the forest preserve district may not be bound to the county zoning ordinances, it must still comply with other county ordinances (e.g., building, sewer, electrical, and plumbing ordinances).¹³ The reasoning being that such ordinances are not by their very nature designed to thwart a certain undertaking.¹⁴ Instead, those ordinances act to promote that undertaking’s public health and safety.¹⁵

To the extent a specific zoning ordinance is not at issue here, it would appear the same reasoning applying to county zoning ordinances would also apply to municipal zoning ordinances. As with county zoning ordinances, forest preserve districts would not be subject to municipal zoning ordinances to the extent they would frustrate the forest preserve district’s statutory mandate.¹⁶

Conclusion:

In sum, it is the opinion of this office that forest preserve districts are not bound by county or municipal zoning ordinances, so long as the forest preserve district is operating consistent with its statutory mandate. In so operating, however, forest preserve districts

¹⁰ Ill. Atty. Gen. Op. No. S-79-1421, p. 3.

¹¹ See *McNamee v. Federated Equipment & Supply Co.*, 181 Ill. 2d 415, 423 (1998) (an interpretation that renders any portion of a statute meaningless should be avoided).

¹² *Id.* at p. 5.

¹³ *Id.* (citing *Village of Swansea v. County of St. Clair*, 45 Ill. App. 3d 184, 188 (1977) (while the county acting pursuant to statutory mandate is not obligated to comply with city zoning ordinances that frustrate the aim of that authority, the county cannot proceed in total disregard of the city’s building, sewer, electrical and plumbing ordinances as such ordinances are not by their very nature capable of thwarting the proposed project and are instead designed to promote public health and public safety).

¹⁴ *Village of Swansea*, 45 Ill. App. 3d at 188.

¹⁵ *Id.*

¹⁶ See Ill. Atty. Gen. Op. No. 11-005 (2011), p. 1 (public school districts are subject to municipal and county zoning ordinances, except to the extent that compliance with local zoning would frustrate a school district’s statutory objectives); see also *Gurba v. Community High School District No. 155*, 2014 IL App (2d) 140098 (requiring conformity to City zoning ordinances does not prevent the School Board and District from carrying out their mandate of providing public education).


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should work to comply with the relevant county and municipal building codes to the extent that they do not interfere with the forest preserve district's statutory mandate.

If you have any additional questions, or if we can be of any further assistance, please do not hesitate to contact me.

Sincerely,
GIFFIN, WINNING, COHEN & BODEWES, P.C.


Herman G. Bodewes


John M. Gabala

Disclaimer: This opinion was prepared by Giffin, Winning, Cohen and Bodewes, P.C., at the request of UCCI and is to be used solely by UCCI and its members. The State's Attorney is the attorney for the County. Legal advice, if requested, should be sought from the State's Attorney.