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June 3, 2008

VIA U.S. MAIL & E-MAIL

Hon. Rod R. Blagojevich
Governor, State of Illinois
Capitol Building – Room 207
Springfield, IL 62706-1150

Re: House Bill - HB3441
Amendment to Municipal Code, Sec. 7-4-4

Dear Governor Blagojevich,

I write in support of the captioned House Bill and to provide you with some history about the bill. I am the person who drafted the bill for Rep. Osmond last year, after obtaining her support for the initiative to amend the statute. Briefly, the bill amends an arcane provision of the municipal code dating back to the 1870's which granted municipalities "jurisdiction" outside their municipal boundaries up to three miles, over water. The amendment makes it clear that this grant of general jurisdiction does not apply to municipal zoning power, which under Article 11 of the Municipal Code, is limited to property fully within the corporate boundaries of the municipality.

While this concept seems rather rudimentary, actions of certain municipalities made it clear that the language of the statute needed to be addressed.

Section 7-4-4 was adopted in 1871. The only reported case in Illinois history addressing that section of the Municipal Code was published in 1884. That case had to do with the power of a municipality to authorize the construction of a trestle bridge over the Chicago River. No one really knows the origin of the statute or the original legislative intent. The statute provides: "The corporate authorities in all municipalities have jurisdiction over all waters within or bordering upon the municipality, to the extent of 3 miles beyond the corporate limits, but not beyond the limits of the state." 65 ILCS 5/7-4-4.

Section 11-13-1 of the modern Illinois Municipal Code (65 ILCS 5/11-13-1) provides municipalities with the statutory basis for all municipal powers, including the power to regulate the use of private property – zoning. That section clearly prohibits municipalities from exercising zoning power outside the corporate limits of the municipality if the county in which the municipality is situated has adopted a zoning ordinance. Specifically, Section 5/11-13-1 provides, in pertinent part: "... No municipality shall exercise any power set forth in this Division 13 outside the corporate limits thereof, if the county in which such municipality is situated has adopted 'An Act in relation to county zoning', approved June 12, 1935, as amended." Since every county in the state has adopted zoning ordinances, no Illinois municipality may regulate the use of private property outside its corporate limits.

The statutory scheme set out in Section 11 makes obvious sense. Without such a prohibition, numerous municipalities abutting an unincorporated parcel could pass conflicting zoning ordinances. However, notwithstanding the aforementioned prohibition, certain municipalities in Lake County have attempted to regulate the use of privately owned lakes which, while outside their corporate limits in unincorporated Lake County, abut their boundaries. The towns have invoked the "three mile, over-water statute" as the basis for their authority to regulate the use of the private lake property outside their municipal boundaries. The municipalities argue that the "jurisdiction" granted in Section 7-4-4 includes the power to zone. The Illinois courts have addressed the apparent conflict between a general grant of jurisdiction to a municipality and an explicit limitation on the exercise of municipal authority. In *County of Will v. City of Naperville*, 266 Ill. App. 3d 662, 589 N.E.2d 1090 (3rd Dist. 1992), the court found that a general grant of extraterritorial jurisdiction is general in nature and does not over-ride a specific limitation on the exercise of municipal zoning power mandating that the municipality may only zone property within its boundaries.

In several recent circumstances, when the conflict in the law was pointed out to the municipality attempting to regulate the unincorporated lake property, the landowner was told that they could fight the matter in court. Private citizens have needed to resort to legal counsel to protect their property rights. In some cases, several municipalities abutting the same unincorporated lake adopted conflicting use ordinances governing the entire lake. Landowners have been left confused as to which Village's ordinance governs – or worse, they followed one ordinance on one part of the lake and another elsewhere on the same lake.

I became personally involved when a "lake commission" (established through an intergovernmental agreement of the three Villages surrounding unincorporated Round Lake) attempted to require anyone operating a boat on our lake, including the owners of the lake, to purchase and display a permit at the cost of sixty dollars per boat, per year. We were to be charged to use our own private property – essentially a tax on the use of our private property. The property in question was completely outside of the corporate limits of any of the

municipalities, in unincorporated Lake County. After an appeal directly to the mayors of the three Villages in question, the lake commission was ordered not to proceed with any "sticker program." Luckily, one or more of the mayors understood the illegality of the attempt to regulate our unincorporated private property. Unfortunately, one of those mayors, Ms. Ila Bauer of Round Lake Park, IL, has passed away. Unless the "three-mile statute" is made clear, on its face, that it only applies to general jurisdiction, we may very well face another attempt to regulate the use of our private property by municipalities who should have no say in the land use issues relating to our property located outside their municipal boundaries.

On a political level, the attempt to regulate property outside a village's boundary is , at best, bad government. The unincorporated landowner need not be notified of the effort to regulate his property because such notice only goes to residents of the village in question. Even if he hears of the effort anecdotally, he really has no voice. He certainly can't express himself at the ballot box – he's not a resident of the village attempting to regulate his property. Without the Article 11 prohibition against extraterritorial zoning, he would be entirely disenfranchised. There is sound reasoning in the statutory scheme of the Municipal Code. Yet, when the full import of the Code was presented in opposition to efforts to regulate lakes other than my own, the disenfranchised private property owners have been told to "tell it to the judge."

We presented this situation to several members of the Illinois General Assembly. We found widespread support for an amendment to make the general three mile jurisdiction statute clear, on its face, that it does not supersede the modern Municipal Code prohibition against regulating the use of private property beyond the corporate municipal limits. I was asked to draft the proposed legislation and Rep. JoAnn Osmond was kind enough to sponsor the bill in the House. We found only token opposition to this bill. Only one person showed up to testify against the bill before the House Local Government Committee – whereas several people testified in favor of the bill. The House passed the bill by a huge bipartisan margin of 113 to 3. The bill enjoyed similar support in the Senate. No one testified against the bill before the Senate Local Government Committee. The bill passed unanimously in the Senate Local Government Committee and passed in the Senate by a vote of 42-8-3.

We learned of a last minute effort by a Lake County Board member and a Republican political ally of that person to apply pressure to several Senators to vote against the bill. Apparently, one or two mayors still want the jurisdictional statute to stay on the books, unaltered since 1871, so that they may attempt to bully landowners who they do not represent with land use restrictions on property outside the corporate limits of their municipality. The mayors argue that they will lose their power to protect the safety of their citizens who use the lake. This is not only false, but it is intentionally misleading. These very mayors have been told, by both public and private attorneys, that they will retain the general police power over waters abutting their villages. They can use that power to enforce the Boat Registration and Safety Act – a

comprehensive safety statute governing the use of all watercraft on all waters within the State, public and private. They can use their police power to enforce the Illinois Criminal Code, the regulations of the Illinois EPA, or any number of other State laws. The attempt to characterize this as a safety issue is false and misleading. Clearly, this is about power. Unfortunately, eight Senators were compelled – for political reasons or otherwise, to oppose the bill. However, they could express no valid reason for their opposition. The Senate sponsor of the bill, Sen. John Cullerton, nevertheless offered to add a friendly amendment to the bill addressing any safety issues which they felt concern over. His offer was met with both silence and continued opposition. Again, this opposition is not about safety. The mayors in question do not even enforce the state boating safety laws that exist. They can't identify a safety regulation that they would want to enforce that is not within the Boat Registration and Safety Act. No, the regulations that interest the limited opposition deal with charging fees or restricting use and have nothing to do with safety.

To the credit of several other mayors in Lake County, this bill enjoys widespread political and public support. I have attended several town meetings to present and discuss this bill and have been met with tremendous support for the bill. In fact, none of the few opposed to the bill have ever been able to articulate a viable reason for their opposition. At one such town hall meeting I was even accused of attempting to promote river boat gambling through this bill. (Please don't even ask me how this bill could possibly favor the interests of river boat gambling!) In contrast, the bill is supported by numerous state-wide organizations, including the Illinois Federation for Outdoor Resources (a grass-roots land-use advocacy group which has over 70,000 Illinois citizens as members), as well as the vast majority of private citizens.

For your reference, I enclose a copy of the bill, a copy of the *County of Will* case, and a copy of Section 11-13-1, which is the law at odds with the statute which is the subject of the amendment.

I ask that you sign this simple, but important, amendment to the ancient law to bring it into the modern era – so that the section of the Municipal Code in question is no longer in conflict with the modern elements of the Municipal Code. If, for any reason, you have any doubts as to the efficacy of this amendment, please feel free to call the undersigned at your convenience. I would be happy to respond to any counter-argument that may be presented to you and would welcome the opportunity to discuss this bill with you or your staff. Likewise, I am sure that the Senate and House sponsors are quite conversant with the particulars relating to this bill and I know that they would be pleased to discuss the matter. There is truly no rebuttal argument to this bill that can survive the light of day – which is why the opposition could only muster eleven politically obtained votes out of the 169 votes in the General Assembly. The bipartisan support for this bill demonstrates that the issues addressed by the amendment transcend politics. If, for any reason, you might consider withholding your approval of this bill, I

would respectfully ask that your staff please contact me and allow me to address any concerns you might have. The individual landowners of unincorporated property throughout the State need this amendment desperately. Your support for this bill would be deeply appreciated by many many citizens throughout the State. Thank you for your consideration.

Very truly yours,

CLAUSEN MILLER P.C.

By: 

Martin C. Sener, Esq.

MCS:ac
Enclosure
cc: Mr. Larry O'Brien, Senate Liaison
Mr. Mike Woods
Sen. John Cullerton
Rep. JoAnn Osmond

Full Text of HB3441

HB3441 Engrossed LRB095 11341 HLH 32057 b

AN ACT concerning local government.

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

Section 5. The Illinois Municipal Code is amended by changing Section 7-4-4 as follows:

(65 ILCS 5/7-4-4) (from Ch. 24, par. 7-4-4)

Sec. 7-4-4. The corporate authorities in all municipalities have jurisdiction over all waters within or bordering upon the municipality, to the extent of 3 miles beyond the corporate limits, but not beyond the limits of the State. Nothing in this Section shall be construed to authorize a municipality to exercise zoning power or otherwise restrict the use of private property outside of the corporate limits of the municipality.

(Source: Laws 1961, p. 576.)

Section 99. Effective date. This Act takes effect upon becoming law.

§ 7-4-4. The corporate authorities in all municipalities have jurisdiction over all waters within or bordering upon the municipality, to the extent of 3 miles beyond the corporate limits, but not beyond the limits of the State.

Laws 1961, p. 576, § 7-4-4, eff. July 1, 1961.

Formerly Ill.Rev.Stat.1991, ch. 24, ¶ 7-4-4.

Historical and Statutory Notes

Source. Laws 1871-72, p. 218, art. V, (as renumbered), § 111; Laws 1875, p. 62, § 1; Laws 1929, p. 254, § 1; S.H.A. ch. 24, ¶ 83. Laws 1941, vol. 2, p. 19, § 8-2; S.H.A. ch. 24, ¶ 8-2.

Library References

Municipal Corporations ⇐23, 24.

Westlaw Topic No. 268.

C.J.S. Municipal Corporations §§ 37 to 43.

Notes of Decisions

Bridges 1

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1. Bridges

City could authorize railroad corporation to build bridge across the Chicago river, which is part of the navigable waters of the United States. McCartney v. Chicago & E.R. Co., 1884, 112 Ill. 611.

5/11-13-1. Objectives; classification, regulation and location of uses; non-conforming uses

§ 11-13-1. To the end that adequate light, pure air, and safety from fire and other dangers may be secured, that the taxable value of land and buildings throughout the municipality may be conserved, that congestion in the public streets may be lessened or avoided, that the hazards to persons and damage to property resulting from the accumulation or runoff of storm or flood waters may be lessened or avoided, and that the public health, safety, comfort, morals, and welfare may otherwise be promoted, and to insure and facilitate the preservation of sites, areas, and structures of historical, architectural and aesthetic importance; the corporate authorities in each municipality have the following powers:

(1) To regulate and limit the height and bulk of buildings hereafter to be erected; (2) to establish, regulate and limit, subject to the provisions of Division 14 of this Article 11, the building or set-back lines on or along any street, traffic-way, drive, parkway or storm or floodwater runoff channel or basin; (3) to regulate and limit the intensity of the use of lot areas, and to regulate and determine the area of open spaces, within and surrounding such buildings; (4) to classify, regulate and restrict the location of trades and industries and the location of buildings designed for specified industrial, business, residential, and other uses; (5) to divide the entire municipality into districts of such number, shape, area, and of such different classes (according to use of land and buildings, height and bulk of buildings, intensity of the use of lot area, area of open spaces, or other classification) as may be deemed best suited to carry out the purposes of this Division 13; (6) to fix standards to which buildings or structures therein shall conform; (7) to prohibit uses, buildings, or structures incompatible with the character of such districts; (8) to prevent additions to and alteration or remodeling of existing buildings or structures in such a way as to avoid the restrictions and limitations lawfully imposed under this Division 13; (9) to classify, to regulate and restrict the use of property on the basis of family relationship, which family relationship may be defined as one or more persons each related to the other by blood, marriage or adoption and maintaining a common household; and (10) to regulate or forbid any structure or activity which may hinder access to solar energy necessary for the proper functioning of a solar energy system, as defined in Section 1.2 of The Comprehensive Solar Energy Act of 1977.[1]

The powers enumerated may be exercised within the corporate limits or within contiguous territory not more than one and one-half miles beyond the corporate limits and not included within any municipality. However, if any municipality adopts a plan pursuant to Division 12 of Article 11 which plan includes in its provisions a provision that the plan applies to such contiguous territory not more than one and one-half miles beyond the corporate limits and not included in any municipality, then no other municipality shall adopt a plan that shall apply to any territory included within the territory provided in the plan first so adopted by another municipality. No municipality shall exercise any power set forth in this Division 13 outside the corporate limits thereof, if the county in which such municipality is situated has adopted "An Act in relation to county zoning", approved June 12, 1935, as amended.[2]

County of Will v. City of Naperville
Ill.App. 3 Dist.,1992.

Appellate Court of Illinois,Third District.
COUNTY OF WILL, Plaintiff-Appellee,
v.
CITY OF NAPERVILLE, Defendant-Appellant.
No. 3-91-0024.

March 26, 1992.

County brought suit against city, seeking injunction to prohibit construction of fire department building on land purchased by city outside of its territorial boundaries and not contiguous to city boundaries, following city zoning action permitting such construction. The Circuit Court, Will County, William R. Penn, J., entered judgment for county and city appealed. The Appellate Court, Slater, J., held that county and not city had authority to zone land in question.

Affirmed.

West Headnotes

[1] Zoning and Planning 414 45

414 Zoning and Planning
414II Validity of Zoning Regulations
414II(A) In General
414k45 k. Territorial Limitations. Most Cited Cases
City did not have power to zone its property lying outside city corporate limits, even though statute provided that property located outside of municipal limits was subject to ordinances, control and jurisdiction of municipality in same manner as property within corporate limits; statute did not specifically refer to zoning, and any power in that regard was at best implied, and could not exist in face of another statute explicitly granting counties right to zone outside of municipal boundaries and limiting municipality's power to do so. S.H.A. ch. 24, ¶¶ 7-4-2, 11-13-1 et seq.

[2] Zoning and Planning 414 14

414 Zoning and Planning
414I In General
414k14 k. Concurrent and Conflicting Regulations. Most Cited Cases
Provision of statute, that provisions found to be inconsistent shall be considered alternative, did not permit municipality to zone property outside of its boundaries, as arguably implied under one section of code, in face of statutory provision expressly conferring upon counties right to zone such property and limiting municipality's power to do so; provisions were not in conflict as one described general jurisdictional authority of municipalities and the other sets forth specific zoning powers, including limitation on extraterritorial zoning. S.H.A. ch. 24, ¶¶ 1-9-1, 7-4-2, 11-13-1 et seq.

[3] Zoning and Planning 414 45

414 Zoning and Planning
414II Validity of Zoning Regulations
414II(A) In General
414k45 k. Territorial Limitations. Most Cited Cases
Status of municipality as a home-rule unit did not endow it with authority to zone beyond its territorial limits.

****1091*662***691**Marvin J. Glink (argued), David Lincoln Ader (argued), Ancel, Glink, Diamond & Cope, P.C., Chicago, for City of Naperville.
Judith Z. Kelly (argued), States' Attys. Appellate Prosecutor, Ottawa, Edward Burmila, Jr., Will County State's Atty., Joliet, John X. Breslin, Deputy Director, State's Attys. Appellate Prosecutor, Ottawa, for County of Will.
Justice SLATER delivered the opinion of the court:
In this case the City of Naperville (city) and the County of Will (county) each claim the power to zone a parcel of land. The trial court found in favor of the county. We affirm.

The city purchased a 40 acre parcel of land in unincorporated Will County. The parcel was not contiguous to the corporate limits of the city nor was it geographically situated to permit annexation by the

city. The parcel was zoned A-1 (agricultural) under the county zoning ordinance. In accordance with the city's plan to place a fire station, maintenance facility, water storage tanks and other structures on the property, the city sought and received approval from the Naperville Plan Commission and the city council to zone the property R-1 (low density single family residence) with a conditional use permit for municipal uses. This was done by city ordinance. The city began to prepare the site, including injecting sludge into the property, applying compost over the ground and building earthen berms. The county then claimed that the city's action violated the county's zoning ordinance***663** which prohibited the filling of land without obtaining a site development permit. The county also claimed that use of the land was restricted to agricultural purposes unless the city obtained a special use permit. The county sought a declaratory judgment that the parcel was subject to the Will County zoning ordinance and a permanent injunction seeking to prevent the city from filling the land, to prevent further violations of the county zoning ordinance and to require the city to restore the land to its former condition. The county relied on section 5-12001 of the Counties Code (Ill.Rev.Stat.1989, ch. 34, par. 5-12001) and section 11-13-1 of the Illinois Municipal Code (Ill.Rev.Stat.1989, ch. 24, par. 11-13-1) while the city believed that section 7-4-2 of the Illinois Municipal Code (Ill.Rev.Stat.1989, ch. 24, par. 7-4-2) should be controlling. The circuit court found that the parcel of land was subject to the county zoning ordinance and ordered the city to cease development of the property ****1092***692** and apply to the county for a site development permit. This appeal followed.

[1] The issue presented by this case may be stated simply: does the city have the power to zone its property which lies outside the city's corporate limits or does that power belong to the county? The county relies upon two statutory sections to support its position. Section 5-12001 of the Counties Code grants general zoning authority to the county over lands outside the limits of cities, villages and incorporated towns which have municipal zoning ordinances. This section also provides:

"Nothing in this Division shall be construed to restrict the powers granted by statute to cities, villages and incorporated towns as to territory contiguous to but outside of the limits of such cities, villages and incorporated towns. Any zoning ordinance enacted by a city, village or incorporated town shall supersede, with respect to territory within the corporate limits of the municipality, any county zoning plan otherwise applicable." Ill.Rev.Stat.1989, ch. 34, par 5-12001.

The county does not contend that section 5-12001 limits the zoning power of the city. The county simply notes that this section contains a specific grant of power to the county to zone unincorporated areas. The county maintains, however, that section 11-13-1 of the Illinois Municipal Code restricts the city's zoning power and prohibits it from exercising that power beyond city limits. That section provides, in relevant part:

"The powers enumerated may be exercised within the corporate limits or within contiguous territory not more than one ***664** and one-half miles beyond the corporate limits and not included within any municipality.* * * No municipality shall exercise any power set forth in this Division 13 outside the corporate limits thereof, if the county in which such municipality is located has adopted 'An Act in relation to county zoning', approved June 12, 1935, as amended." Ill.Rev.Stat.1989, ch. 24, par. 11-13-1.

The "Division 13" referred to above is that part of the Illinois Municipal Code which grants general zoning powers to municipalities.

On the other hand, the city argues that it has absolute authority over the parcel of land in question on the basis of section 7-4-2 of the Illinois Municipal Code, which states:

"All property which (1) is owned by a municipality, and (2) lies outside the corporate limits of the municipality, and (3) does not lie within the corporate limits of any municipality, shall be subject to the ordinances, control, and jurisdiction of the municipality in all respects the same as the property owned by the municipality which lies within the corporate limits thereof." Ill.Rev.Stat.1989, ch. 24, par. 7-4-2.

The city contends that the plain language of section 7-4-2 gives the city the same power and control over the outlying 40-acre parcel as it has over property within the corporate limits. Since the city has the

power to zone property lying within city limits, the city maintains that it possesses the same power over the property in question. The county argues, however, that since section 7-4-2 does not specifically refer to zoning, any power in this regard is at best implied by the statutory language. Such an implied power cannot exist, according to the county, where that power has been *explicitly granted* to the county by section 5-12001 of the Counties Code and has been *explicitly denied* to the city by section 11-13-1 of the Illinois Municipal Code.

We find the county's argument persuasive. Section 7-4-2 of the Municipal Code, on which the city relies, is a general provision describing the jurisdictional scope of a municipality's authority. The powers of a municipality are set forth in article 11 of the Code. Division 13 of article 11 details a municipality's zoning powers. The power to zone outside the corporate limits is specifically and unambiguously denied by section 11-13-1 when the county has enacted a zoning ordinance. This specific statutory provision is controlling and cannot be broadened by reference to the general jurisdictional provisions of section 7-4*****693 -**1093** 2. See ***665***_People v. Singleton_ (1984), 103 Ill.2d 339, 82 Ill.Dec. 666, 469 N.E.2d 200 (specific statutory provisions control over general provisions).

[2] Nor do we find that section 1-9-1 of the Illinois Municipal Code, upon which the city relies, requires a different result. That section states in part:

"The provisions of this Code shall be cumulative in effect and if any provision is inconsistent with another provision of this Code * * * it shall be considered as an alternative or additional power and not as a limitation upon any other power granted to or possessed by municipalities." Ill.Rev.Stat.1989, ch. 24, par. 1-9-1.

This section is part of the general savings and grandfathering provisions of the Illinois Municipal Code, enacted to avoid problems resulting from the fact that the Code is a compilation of provisions enacted over decades. As stated above, section 7-4-2 describes the general jurisdictional authority of municipalities regarding property owned outside the corporate limits. Section 11-13-1 sets forth the specific zoning power, including limitations on that power. These provisions are not inconsistent. One describes in broad terms the general jurisdictional authority while the other delineates the specific powers which may be exercised within that authority. The general language of section 1-9-1 may not be used to amend and broaden specific statutory grants of power.

[3] Finally, the city's status as a home-rule unit does not endow it with any extraterritorial zoning authority. (_City of Carbondale v. Van Natta_ (1975), 61 Ill.2d 483, 338 N.E.2d 19.) Such extraterritorial governmental powers may only be conferred by the legislature. (_City of Carbondale_, 61 Ill.2d 483, 338 N.E.2d 19;_City of Peoria v. Keehner_ (1983), 115 Ill.App.3d 130, 70 Ill.Dec. 772, 449 N.E.2d 1376.) Contrary to the city's contention, we find that section 7-4-2 does not include the zoning power which the city seeks to exercise in this case.

For the reasons stated above, we affirm the judgment of the circuit court.

Affirmed.

GORMAN and STOUDER, JJ., concur.
Ill.App. 3 Dist.,1992.
County of Will v. City of Naperville
226 Ill.App.3d 662, 589 N.E.2d 1090, 168 Ill.Dec. 690

END OF DOCUMENT