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School districts and zoning exemptions

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The Illinois Supreme Court recently heard oral arguments in what's been dubbed "The Bleacher Case" and directed pointed questions to a school board concerning its claim that school districts are exempt from municipal zoning requirements.

For those unfamiliar with the facts, *Gurba v. Community High School District 155*, 23 N.E.3d 1201 (2015), arose when the school board decided to replace the football bleachers at Crystal Lake South High School. The regional superintendent reviewed the plans and issued a building permit pursuant to Section 3-14.20 of the Illinois School Code. The board did not, however, proceed under Crystal Lake's zoning code or otherwise notify the city.

During construction, the city claimed that the project required a special-use permit, a storm water permit and zoning variances. The board disagreed, and eventually the city issued a stop-work order.

The homeowners abutting the football field then filed a lawsuit seeking to privately enforce the city's zoning ordinances. The circuit court ruled that the board was subject to the city's land use ordinances, and the 2nd District Appellate Court affirmed.

At the May 20 oral argument, the board argued that the 2nd District "made a very serious error ... in defining its own scope of what it thought public education looked like."

The board argued that Article X of the state constitution directs the General Assembly to exercise control of public education, which it does through the School Code.

The board stated that the 2nd District made a narrow definition of the scope of public education, and thus was able to find that the city's zoning regulations did not infringe on the board's statutory obligation to provide public education.

Among the numerous questions that the justices directed to the board, one was whether a direct conflict between the city's zoning ordinances and the School Code existed.

The board's counsel responded that while there may be no direct conflict, Article X gives the General Assembly the power to control construction of schools, and there was no delegation to municipalities to control construction through zoning. The board's counsel stated that the nature of the use of school property drives the result: Any school property used for school purposes is immune from any regulation that has not been authorized by the General Assembly.

Based on the board's argument, the court presented different scenarios creating undesired results. Justice Robert R. Thomas asked whether a school district would have the right to build a 20-story building if, despite violating zoning laws, it could be justified for school purposes. Counsel for the board said yes, the school district could build such a building for school purposes.

Chief Justice Rita B. Garman asked whether a school could raise livestock in the middle of a city, say 20 head of cattle. Again, the board's counsel acknowledged that if it was for an educational purpose, as granted in the School Code, then yes, a school district would have the authority.

In its response, the city acknowledged that the General Assembly has plenary power over schools, but that the General Assembly did not expressly release school districts from complying with "any other laws," including municipal zoning laws. The city argued that the use of standard local zoning procedures is the most efficient way to balance the policy goals of thousands of local governments in this state.

The city stated that this point has been made many times by the Supreme Court, most notably in *Wilmette Park District v. Village of Wilmette*, 112 Ill.2d 6 (1986), a case not cited in the 2nd District's opinion in *Gurba*. In *Wilmette Park District*, the court ruled that a park district did not have immunity from local zoning and thus was required to engage in the local zoning process.

(I)t appears that the court is at least leaning toward affirming the 2nd District's holding that a school district is subject to municipal zoning regulations.

The only question that the court posed to the city's attorney was whether a risk existed that municipalities may use zoning to interfere with the state's authority to control education.

The city argued that policy issues in a land use context concern local issues and do not apply to the constitutional charter of providing education. The city acknowledged that while a municipality could theoretically use zoning to affect core issues of education, those regulations are subject to substantive due process requirements.

Further, the city noted that *Wilmette Park District* held that if a municipality abused its zoning authority to thwart a park district's statutory duties, such action would be applicable to judicial review.

The city argued that this remedy would be applicable to school districts if zoning regulations infringed on those powers expressly authorized through the School Code.

Based on the court's questioning, it appears that the court is at least leaning toward affirming the 2nd District's holding that a school district is subject to municipal zoning regulations.

While the court's decision will provide a concrete answer as to whether school districts are subject to municipal land use ordinances, school districts should take affirmative steps to work with municipalities to comply with applicable zoning procedures.

Not only is this required by the law as currently applied under *Gurba*, it will also foster the overriding policy consideration of intergovernmental cooperation, as recognized in *Wilmette Park District*. Intergovernmental cooperation is critical at the local level and will help school districts avoid pitfalls such as revocation of building permits or stop-work orders.