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Municipalities May Deviate From Their Local Zoning Procedures At Times

An Illinois Appellate Court has held that the Village of Clarendon Hills' deviation from its local procedural rules established in its Zoning Ordinance will not necessarily invalidate subsequent zoning approvals made relative to that matter. In an unpublished opinion, the Appellate Court for the Second District examined the Village of Clarendon Hills' approval of a multi-unit condominium building to be located within the Village's designated Business District. The Court held that although the Village's approval of the building did not completely follow the rules of its Zoning Ordinances, the approval was not invalid because the plaintiffs had only alleged a violation of the Zoning Ordinance, and not any procedural requirements of any State statute. The court also confirmed that their holding applied to both home and non-home rule units in Illinois.

A summary of the facts of the case and the Court's full holding can be found on Page 2.



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The full decision of the Illinois Appellate Court in *Hanlon v. Village of Clarendon Hills*, 2016 IL App (2d) 151233-U can be found at:

http://www.illinoiscourts.gov/R23_Orders/AppellateCourt/2016/2ndDistrict/2151233_R23.pdf

SUMMARY OF FACTS

On August 31, 2016, the Illinois Appellate Court for the Second District held that the Village of Clarendon Hills (the “Village”) did not violate various sections of its Zoning Ordinance when it allegedly failed to comply with its own ordinances after approving a multi-unit condominium building in a designated business district.

In *Hanlon v. Village of Clarendon Hills*, the Court examined whether the Village’s approval of 103 Prospect Avenue (the “Property”), a multi-unit condominium building, was valid under the Village’s Zoning Ordinance. ¶ 2. The then-vacant Property had been located in an area zoned “B-1 Retail Business.” ¶ 4 Under the Zoning Ordinance, a B-1 Retail designation only allowed for restaurants and shops on the first floor of any building, and for residential properties on the second floor or above. ¶ 7.

Although the Zoning Ordinance also allowed for planned unit developments (“PUDs”) to be built within the designated zoning area, any applicant requesting approval of a PUD needed to satisfy all of the requirements of the Zoning Ordinance. ¶ 8. These requirements included: 1) that the PUD would not negatively impact traffic, schools, storm water, taxes or revenues; 2) the PUD had to meet the standards for a special use permit; and (3) the PUD would need to meet fourteen (14) standards set forth in Section 20.14.3.B of the Zoning Ordinance. ¶ 8. Finally, the PUD application would have to be approved in two (2) stages, first in a preliminary approval by the Village Board and then through a final approval. ¶ 8-9. However, the Village was permitted to grant any applicant an extension at its discretion. ¶ 8-9.

The owner of the Property entered into discussions with the Village regarding a potential development of the Property into a multi-unit condominium. ¶ 16. The owner submitted a proposal for a PUD featuring an eight (8) unit, three (3) story residential condominium building, with the first floor used as a parking lot for the building’s residents. ¶19. Following an August 22, 2013 Village Plan Commission hearing, the proposal was recommended to the Village Board. *Id.* Both the Village Downtown Design Review Commission and the Village Land Use Committee also recommended approval days later. *Id.* On October 21, 2013, the Village Board preliminarily approved the PUD and enacted the challenged ordinance, No. 13-10-32. ¶ 20.

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Two (2) neighboring property owners challenged the ordinance and the Property's preliminary PUD approval. The neighbors alleged, among other claims, that ordinance was arbitrary and unreasonable, and that the Village had failed to comply with its own zoning rules in approving the ordinance. ¶ 21.

Upon review, the Second District Appellate Court affirmed the trial court's findings and held that the neighbors had not satisfied their burden to show that the ordinance was arbitrary or unreasonable. ¶ 90. Next, the Court found the Village had provided enough evidence to show that the new development would bring a major public benefit to the district, despite it being the neighbors' burden to show that the Property would have a detrimental effect on the rest of the surrounding properties. ¶ 85.

Last, the Court addressed the property owner's allegations that the Village had not followed its own rules when approving the Property's development. Significantly, it noted that a court will not overrule a municipality's zoning decision even if it failed to follow the procedures in its own ordinance. The Court distinguished a municipality's lack of compliance with their own rules versus the procedural rules set in State law. ¶ 94. Additionally, the Court stated that it was not clear if the Village had in fact deviated from its own rules by approving the PUD due to a lack of evidence on the record indicating a timeframe to apply for complete approval. ¶ 66. Lastly, because the Village's Zoning Ordinance listed PUDs as a permitted use in the zoning district, if the PUD was found to have met its requirements for approval, then such approval did not violate the Village's Zoning Ordinance. ¶ 96.

Thus, the Hanlon decisions instructs that both a non-home and home rule unit's lack of compliance with their own zoning ordinances regulations may not necessarily make an action outside of their respective own rules invalid. However, the court did indicate that had the Village violated any procedural rules prescribed by State law, the analysis could have differed. Put another way, if a municipality is going to deviate from the zoning procedures set forth in its zoning ordinance, such deviation may be allowed, so long as State law zoning procedure requirements are followed.