

## LOCAL ZONING ORDINANCES APPLY TO SCHOOL DISTRICTS

In Gurba v. Community H.S. District 155, 2014 Ill. App. 2d 2-14-0098 (September 3, 2014) the Second District Appellate Court held that a municipality has the authority to enforce its zoning ordinances against a local school district because land use regulations have no inherent impact on the provision of public education.

The Court found that a home rule municipality has the authority to enforce local zoning ordinances against school districts under the Illinois Constitution. The school district in the case unsuccessfully argued that home rule municipal powers must be subordinate to anything that touches upon public education. The Court reasoned that a home rule unit's powers under the Illinois Constitution take precedence over the powers of a school district because a school district's powers are limited by statutory mandates. A home rule municipality can exercise its powers concurrently with the state unless expressly preempted from doing so.

In ruling that the application of municipal zoning ordinances does not interfere with public education, the Court emphasized that zoning is a police power of the municipality. The Illinois Constitution empowers a home rule municipality to enact zoning regulations in order to advance the public health, safety, and welfare. The school district argued that because education was a matter of statewide concern, the City's zoning ordinances were preempted and could not be enforced. The Court disagreed finding that the City's ordinances regulate land use but do not intrude into the area of public education.

Because Article 10 of the School Code provides that a school district has the power to seek zoning changes, the Court concluded that the School Code confirms that local zoning codes apply to school districts. The Court reasoned that any other interpretation would render this provision of the School Code meaningless.

For more information about matters discussed in this issue, please feel free to contact Klein, Thorpe and Jenkins Ltd.



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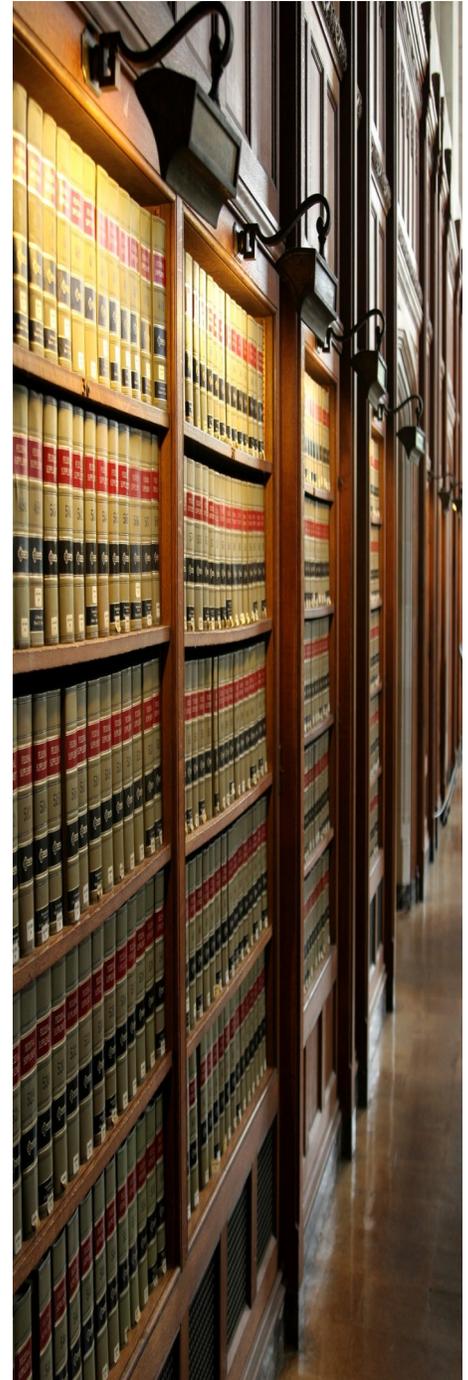
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Finally, the Court rejected the school district's argument that the Health/Life Safety Code referred to in the Illinois School Code covers those issues that traditionally fall under zoning. The Court held that the Health/Life Safety Code is a building code that specifies the standards for the construction and maintenance of structures to be used by the local school board in fulfilling their duties to provide a public education. Zoning codes, on the other hand, regulate the height, bulk and location of structures, the types and intensities of uses to which property may be put, and where the community's various uses may be grouped and located.

While the Court spends a great deal of time assessing the authority of a home rule municipality, the reasoning in the opinion can be readily applied to non-home rule units. The Court broadly stated: "We have determined that statutory interpretation leads to the conclusion that local school boards and school districts are subject to the zoning code of the municipality in which they reside."

This is a significant decision for municipalities and provides persuasive authority for establishing that zoning and land use regulations do not impinge upon any facet of public education. Other regulatory efforts of municipalities against school districts will likely be governed by this analysis.



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