

## LOCAL ZONING REGULATIONS APPLY TO SCHOOL CONSTRUCTION

The Illinois Appellate Court recently clarified that local zoning regulations apply to school construction projects, and that school districts must therefore submit to the zoning regulations of their host municipalities. In *Gurba v. Community H.S. District 155*, 2014 Ill. App. 2d 2-14-0098 (September 3, 2014) the Court held that school districts must submit to their host municipalities' zoning regulations because such land use regulations do not have an inherent impact on public education.

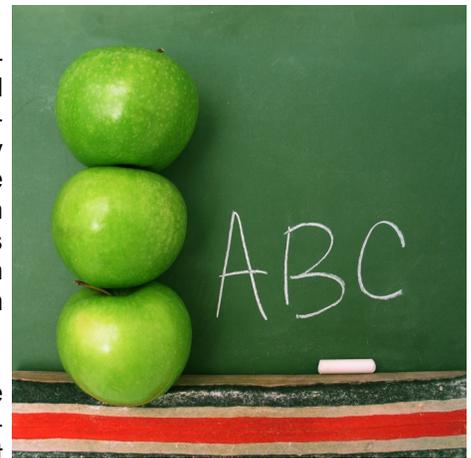
The school district in the case argued that municipal zoning authority was subordinate to the school district's authority and mandate under the Illinois School Code to provide a free appropriate public education. The Court disagreed, finding that under the Illinois Constitution a home rule municipality has the authority to enforce its zoning regulations against school districts within its borders. 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, while a home rule municipality can exercise its powers concurrently with the state unless expressly preempted from doing so.

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.

Finally, the Court held that the Health/Life Safety Code, referred to in the Illinois School Code at 105 ILCS 5/2-3.12, 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 held, and prior court decisions have noted, that school districts must submit to municipal zoning regulations, the Court also noted that such zoning regulations cannot be applied in a way which frustrates or thwarts school districts' statutory obligations. The practical impact of this decision means that while school districts must submit to the zoning process, so long as the changes sought by the school districts relate to the statutory obligations of the school districts, zoning approval should not be withheld because denial of approval would likely frustrate or thwart the school districts' statutory obligations.

For more information about matters discussed in this issue, please contact any one of the KTJ School Law Attorneys.



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