The Legal Scope of Design Review

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March 15, 2018

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Zoning Authority

- The Illinois Municipal Zoning Enabling Law – 65 ILCS 5/11-13-1 *et seq*.
  - "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…"

Design Review Authority - Statute

- The Illinois Municipal Zoning Enabling Law – 65 ILCS 5/11-13-1 *et seq*.
  - A municipality may:
    - Regulate and limit height and bulk of buildings
    - Establish, regulate and limit building or set-back lines
    - Regulate and limit the intensity of the use of lot areas, and to regulate and determine the areas of open spaces, within and surrounding such buildings
    - Divide the municipality into districts of such number, shape, area and of such different classes as may be suited to carry out the purposes of the zoning enabling authority
    - Fix standards to which buildings or structures therein shall conform
    - ***"Establish local standards solely for the review of the exterior design of buildings and structures … and designate a board or commission to implement the review process…"***

- Counties and townships do not have express design review authority

Design Review Authority - Exceptions

- Utility Facilities
- Outdoor off-premises advertising signs
- Outdoor political campaign signs (“reasonable” size regulations are ok)

- Home Rule?
  - Municipalities only
  - Generally: home-rule not limited by Zoning Enabling Law
  - But: no home-rule authority for political signs

Judicial History – Aesthetics and Zoning

- *Haller Sign Works v. Physical Culture Training School* (Sup. Ct. 1911)
  - Plaintiff built and installed a sign for the Defendant.
  - Defendant wouldn't pay because the City of Chicago required removal: state law prohibited sign due to its proximity to a public boulevard.
  - Court rules that the state law is unconstitutional: the aesthetic considerations are "**disassociated entirety from any relation to the public health, morals, comfort, or general welfare**."
- *Forbes v. Hubbard* (Sup. Ct. 1932)
  - "Aesthetic considerations, while not wholly without weight, do not of themselves afford sufficient basis for the invasion of property rights."
  - Aesthetics are too subjective.
  - Zoning decisions "may not be based alone on aesthetic considerations."

Judicial History – Aesthetics and Zoning

- *Neef v. City of Springfield* (Sup. Ct. 1942)
  - City rejects proposed rezoning from residential to commercial (gas station)
  - City desired to "preserve the beauty" of the affected street
  - "It is no objection, however, to a zoning ordinance that it tends to promote an aesthetic purpose, ***if its reasonableness may be sustained on other grounds***."

Judicial History – Aesthetics and Zoning

- *Federal Electric Co. v. Zoning Board of Appeals of the Village of Mt. Prospect* (App. Ct. 1947)
  - Plaintiff installed signs on pre-existing radio towers that were non-conforming as to height
  - Village: Can't "expand" a non-conforming use → signs are illegal
  - Zoning interpretation upheld by ZBA
  - Trial court invalidates the local ordinance.
  - Appellate Court upholds trial court:
    - The 30-foot height limit is not "related to the public health, safety or morals"
    - Zoning power "cannot be exercised exclusively for the purpose of gratifying and cultivating aesthetic tastes."

Judicial History – Aesthetics and Zoning

- *La Salle National Bank v. City of Evanston* (Sup. Ct. 1974)
  - Dispute: density of residential zoning
  - Reviewed as a standard zoning case
    - "Where it appears, from all the facts, that room exists for a difference of opinion concerning the reasonableness of a classification, the legislative judgment must be conclusive."
  - Court finds that City's R-5A zoning is suitable
  - Court declares that aesthetic issues can be considered:
    - Zoning laws cannot only be based on aesthetics. However…
    - "It is no objection to such an ordinance that it tends to promote an aesthetic purpose, if its reasonableness may be sustained on other grounds."
    - Notes that ***other*** jurisdictions do allow "aesthetic factors" to be the "sole basis to validate a zoning classification."
    - "The building contemplated…would be significantly dissimilar to any structure in the immediate vicinity and would alter the area's character."

Judicial History – Aesthetics and Zoning

- *Grobman v. City of Des Plaines* (Sup. Ct. 1975): "Aesthetics may be a consideration in the determination of an ordinance's reasonableness."

- *Ward v. Cook County* (App. Ct. 1979)
  - Dispute: density of residential zoning
  - Court sets forth the "legal guidelines" for a zoning dispute:
    - "Zoning ordinances are presumed valid."
    - Plaintiff must prove that the ordinance is arbitrary and unreasonable, "by clear and convincing evidence"
    - Ordinance is valid if "it bears any substantial relationship to the public health, safety, comfort or welfare."
    - If there's just "a fair difference of opinion concerning the reasonableness of a classification" → the government wins.

  - Quoting *La Salle Bank v. Evanston*, the Court states: ***"It has been repeatedly held by the courts of Illinois that aesthetic factors do have a significant bearing upon zoning to such an extent that they may, in some instances, be utilized as the sole basis to validate a zoning classification."***

Judicial History – Aesthetics and Zoning

- *City of Champaign v. Kroger Co.* (App. Ct. 1980)
  - City sues to enforce sign ordinance
  - Court starts with standard zoning analysis: "Although this case does not involve rezoning, [it] involves many of the same questions that arise when a landowner seeks to have his property reclassified."
  - "Kroger's case will stand or fall depending on how reasonably related the Interim Sign Ordinance is to the zoning trinity of public health, safety, and welfare."
  - After reviewing the history of zoning cases involving aesthetic concerns, the Court declares:

    "**Aesthetics should be viewed as a component of the public welfare."**

- *Wakeland v. City of Urbana* (App. Ct. 2002): if aesthetics can be used to uphold a sign ordinance, as in *Champaign v. Kroger*, then "we see no reason why" aesthetics cannot be used to uphold a decision to downzone property.

Judicial History – Design Review

- *Pacesetter Homes, Inc. v. Village of Olympia Fields* (App. Ct. 1968)
  - Village Design Review Ordinance prohibited "excessive similarity or dissimilarity of design" within 1000 feet:
    - Façade
    - "Size and arrangement" of doors, windows, and porticoes…"including a reverse arrangement thereof"
    - "Cubical contents"
    - Gross floor area
    - "Other significant design features, such as, but not limited to, roof line, height of building, construction material, or architectural design"
    - "Location and elevation of building upon the site"
  - Review process:
    - Building Commissioner either (1) approves, or (2) if Commissioner "believes" that proposal violates ordinance, referral to Committee
    - Committee either approves or denies
    - Applicant can appeal Committee denial to the Village Board
    - Village Board can overturn by two-thirds vote

Judicial History – Design Review

- *Pacesetter Homes, Inc. v. Village of Olympia Fields* (App. Ct. 1968)
  - Court: Ordinance is invalid because it is too vague
    - "Fails to prescribe adequate standards" for the Committee
    - Committee discretion is too broad
  - No discussion of whether design review itself is permitted

    "The Village cites architectural control ordinances enacted by several other municipalities in this State, none of which have been subjected to a judicial determination as to their validity. In light of the view we take of [the Ordinance] of the Village of Olympia Fields, it is unnecessary to consider…the purpose and validity of architectural control ordinances generally."

Judicial History – Design Review

- *R.S.T. Builders, Inc. v. Village of Bolingbrook* (App. Ct. 1986)
  - Appearance Review Committee rejected plans for single-family home
    - Not compatible with "neighboring development"
    - Committee demanded various changes
  - Plan Commission affirms Committee
  - Village Board denies building permit
  - Court review:
    - Bolingbrook Ordinance is "substantially similar" to the Olympia Fields ordinance at issue in *Pacesetter*
    - "Criteria are equally as vague as those found unconstitutionally vague and indefinite in *Pacesetter*"
    - Inadequate standards to control Committee
    - Too much discretion conferred on Committee

Judicial History – Design Review

- *Waterfront Estates Development, Inc. v. City of Palos Hills* (App. Ct. 1992)
  - Appearance Commission conducts hearings on, and issues approvals for, external appearance in connection with building permit applications
  - Proposal: two three-story condo buildings
    - Complied with zoning and building codes
    - Commission denies application: incompatible with adjacent development due to height and design
    - City Council denies applications
  - Court rules for developer: ordinance "uses precisely the sort of criteria held inadequate" in *Pacesetter* and *R.S.T. Builders*
  - Court made two other interesting statements:
    - Distinguished design review and zoning classifications – "incompatibility may be a standard in other contexts"
    - "A municipal ordinance is presumed valid."

Public Act 95-475

- Zoning Enabling Law amended to permit municipalities "to establish local standards solely for the review of the exterior design of buildings and structures, excluding utility facilities and outdoor off-premises advertising signs, and designate a board or commission to implement the review process."

- Effective Jan. 1, 2008

- History of the bill:
  - Original bill was highly specific
  - No substantive Senate discussion
  - Rep. Karen May:
    - "Currently, municipalities defend their design review regulations on a case-by-case basis in the courts."
    - "And this Bill grants them the authority to express it… to establish these regulations. It would establish clear and objective standards and guidelines…"
    - Home-rule municipalities already have the authority; this is for non-home-rule.
  - Unanimous approval

Ok, So Now What?

- Is Design Review legal?
- How PA 95-475 Helps
  - Explicit authority
  - Design review is a function of zoning
- But *Pacesetter* survives…
  - No reported decisions on design review since *Waterfront Estates*
  - How do we square PA 95-475 and *Kroger* with *Pacesetter*?

Well-Crafted Design Review Provisions

- **Clear statement of purpose**
  - Tie design review to overall zoning and planning ordinances
  - Lay out the relationship between design controls and the public welfare:
    - Preserving property values
    - Complement and improve upon the architectural heritage of the community

- **Clear standards**
  - Reasonably identifiable standards to guide administrative bodies and applicants
  - Defined boundaries as to what the design review board can and cannot do or consider

- **Procedures for enforcement**
  - Proper procedures for meetings of design review board
  - Final decision-maker?