

District 155 plans to appeal bleacher ruling
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[PHOTO] Judge Michael Chmiel ruled Wednesday, Dec. 18 that city zoning ordinances and processes apply to school districts. A lawsuit over the bleachers began when three Crystal Lake residents, all living along Amberwood Drive where the football field is located, complained the \$1.18 million bleacher project failed to follow the city zoning process. Caption Kyle Grillot - kgrillot@shawmedia.com

WOODSTOCK – Attorneys for Community High School District 155 say they will appeal a judge’s decision that would require the district to go through the city of Crystal Lake zoning process for a \$1.18 million bleacher expansion already constructed.

Through the appeal, which is expected to be filed within seven days, the district hopes to postpone going through the city zoning ordinance procedure for the already-constructed bleachers at Crystal Lake South High School and freeze potential fines that could reach \$1,000 a day for ordinance violations until an appellate court has ruled on the case.

Crystal Lake attorneys had no objection to the district seeking an appeal, but said the district should still go through the zoning process for the bleachers while the appeal is pending.

After a hearing in front of Judge Michael Chmiel on Wednesday morning, the attorneys from both parties had a closed-door conference to come to an agreement on the appeal process.

Justin Hanson, attorney for Crystal Lake, said the city agreed to not pursue any fines if the district filed the appeal within seven days and hit the deadlines necessary for a hearing in front of Chmiel on Feb. 13. Chmiel will determine whether a stay on the enforcement of zoning procedures will be granted while the case is pending in the appellate court.

The district’s delay in filing an appeal was an issue for Chmiel during the morning hearing.

Chmiel said while he understood the attorneys had difficulties such as getting the school board’s approval for an appeal, the delay went against the expedited process the parties agreed to before the case began. Chmiel first heard the case in September and had rendered a decision in December – a process he said would usually take much longer. “I understand you have hurdles and a board,” Chmiel said. “But it has been 35 days since I rendered that decision.”

Victor Filippini Jr., a city attorney, said the district’s delay was part of the reason for informing school officials about the potential fines. He said the city does not want to fine the district, but wanted administrators to know getting involved in the zoning process as quickly as possible was important.

Chmiel ruled in December the city had zoning authority over the school district. The district built a \$1.18 million bleacher expansion at Crystal Lake High School in the summer that did not go through the process and was challenged by neighboring residents in court. The next court date will be in room 202 of the McHenry County Courthouse on Feb. 13 at 1:30 p.m.

IN THE CIRCUIT COURT OF THE 22nd JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

JEFF GURBA,)
LOUIS A. BIANCHI REVOCABLE TRUST, and)
JEAN M. BIANCHI REVOCABLE TRUST,)

Plaintiffs,)

v.)

Case No. 13 CH 1319

COMMUNITY HIGH SCHOOL DISTRICT 155)
and BOARD OF EDUCATION OF COMMUNITY)
HIGH SCHOOL DISTRICT 155, in the Counties of)
McHenry and Lake,)

Defendants.)

BOARD OF EDUCATION OF COMMUNITY)
HIGH SCHOOL DISTRICT 155, in the Counties of)
McHenry and Lake,)

Third-Party Plaintiff,)

v.)

CITY OF CRYSTAL LAKE, an Illinois municipal)
corporation, and LESLIE SCHERMERHORN, in her)
official capacity as McHenry County Regional)
Superintendent of Schools,)

Third-Party Defendants.)

MEMORANDUM OPINION

This case came before the Court in the afternoon of November 7, 2013, for hearing on cross-motions for summary judgment, *with* the Plaintiffs, Jeff Gurba, Louis A. Bianchi Revocable Trust, and Jean M. Bianchi Revocable Trust, appearing through two of their attorneys, Michael Burney and Thomas Burney; *with* Defendant Community High School

District 155 (“District 155”) and Defendant and Third-Party Plaintiff Board of Education of Community High School District 155, in the Counties of Lake and McHenry (the “District 155 Board”; collectively, the “District 155 Defendants”), appearing through two of their attorneys, Robert Swain and Dean Krone; *with* Third-Party Defendant City of Crystal Lake, an Illinois Municipal corporation (the “City”), appearing through two of its attorneys, Justin Hansen and Victor Filippini, Jr.; *and with* Third-Party Defendant Leslie Schermerhorn, in her official capacity as McHenry County Regional Superintendent of Schools (the “Regional Superintendent”), appearing through one of her attorneys, Carla Wyckoff.

The Court heard the arguments of the parties through their attorneys, and for reasons set forth below, the Court finds the cross-motions should be granted and denied, respectively, in favor of the City.

Procedural Background

On August 12, 2013, the Plaintiffs filed their *Complaint for Permanent Injunction and Other Relief* (the “Complaint”) to begin the litigation in this case. That day, they also filed a *Verified Emergency Motion and Memorandum for Temporary Restraining Order* (the “Plaintiffs’ Motion for TRO”). Through these pleadings, the Plaintiffs sought relief from a construction project occurring at Crystal Lake South High School (“CLS”), whose football stadium abuts the rear line of the property of the Plaintiffs. The Plaintiffs alleged the project has just about doubled and otherwise dwarfed the original height of the bleachers at the stadium, at the rear line of their property, without regard to certain ordinances of the City. The Complaint is stated in one count and seeks injunctive relief against District 155 and the District 155 Board.

On August 14, 2013, the parties appeared before the Court¹ for the first time. That day, the District 155 Defendants filed their (a) *Appearance*; (b) *Verified Answer, Affirmative Defense, and Third Party Complaint*; and (c) *Defendants' Verified Response in Opposition to Plaintiff's Motion for Temporary Restraining Order*. The District 155 Defendants stated their Third Party Complaint² in one count for declaratory judgment relief, seeking an order declaring *that* the Regional Superintendent has the sole and exclusive right and authority to review the plans and specifications for the project at issue and to issue a building permit, *that* the City has no legal right or authority over the same, *and that* the District 155 Board has the legal right and authority to proceed.

On August 14, 2013, the District 155 Board also filed *School District's Verified Emergency Motion and Memorandum for Temporary Restraining Order* (the "District 155 Board's Motion for TRO"). Through the District 155 Board's Motion for TRO, the District 155 Board sought relief from a "stop work order" issued by the City and the ability to continue with the construction of the bleachers.

On August 14, 2013, the Court conducted a hearing on the Plaintiffs' Motion for TRO, and ultimately entered an *Order* which denied the Plaintiffs' Motion for TRO and set the District 155 Board's Motion for TRO for further hearing.

On August 15, 2013, the City filed its *Appearance*.

On August 16, 2013, the City filed *City of Crystal Lake's Verified Response to School District's Motion for Temporary Restraining Order*. On that day, the Court conducted a hearing

¹ Upon the initial filings, this case was assigned to Judge Michael Chmiel. When the parties appeared in open court to present their initial matters, Judge Chmiel was away from the courthouse, and pursuant to administrative order, Judge Thomas Meyer sat for the Court in his absence, through August 16, 2013.

² Even though the caption of the pleading of the District 155 Defendants references a "Third Party Complaint", the body of their pleading references a "Third Party Claim"; the Court reads each as the same, and utilizes that which is set forth in the caption for continuity.

on the District 155 Defendants' Motion for TRO, and ultimately entered an *Agreed Order* which denied the District 155 Board's Motion for TRO, *but also* provided for certain relief, as the City agreed (and therefore was ordered) to defer enforcement of its stop work order so that the bleachers could be completed, essentially without prejudice and with certain further related relief.

On August 23, 2013, the City filed *City of Crystal Lake's Motion for Summary Judgment* (the "City's Motion for Summary Judgment"), and *City of Crystal Lake's Answer to District 155's Complaint for Declaratory Judgment*.

On August 27, 2013, McHenry County State's Attorney Louis Bianchi filed a *Petition to Appoint Special Assistant State's Attorney*, seeking the appointment of a Special Assistant State's Attorney to represent the Regional Superintendent. Through the filing, Mr. Bianchi indicated that he was personally interested in this case, and that the Regional Superintendent was in need of representation.

On August 28, 2013, the Plaintiffs filed a *Motion to Stay Discovery*, seeking relief from discovery until the City's Motion for Summary Judgment could be addressed.

On August 29, 2013, the City's Motion for Summary Judgment was amended to include the signature of counsel for the City.

On April 30, 2013, the Court entered an *Order* through which this case was referred to the Office of the Chief Judge of the Court for assistance in arriving at counsel for the Regional Superintendent.³

On September 4, 2013, the Court entered an *Order Appointing Special State's Attorney*, through which the Petition to Appoint Special Assistant State's Attorney was granted, and the

³ Attorney Wyckoff is an Assistant State's Attorney.

Office of the Lake County State's Attorney was appointed to represent the Regional Superintendent.

On September 5, 2013, the Court heard argument on the Motion to Stay Discovery, and entered an *Order Staying Discovery and on Scheduling*, through which discovery in this case, with one exception, was stayed, and through which a schedule was established for the handling of the City's Motion for Summary Judgment and other dispositive motions.

On September 16, 2013, an *Attorney Appearance* was filed for the Regional Superintendent.

On October 3, 2013, the District 155 Board filed *School District's Response to City's Motion for Summary Judgment*, and *School District's Cross Motion for Summary Judgment* (the "District 155 Board's Motion for Summary Judgment"). On that day, the Regional Superintendent also filed her *Verified Answer to Third Party Complaint*, and *Third Party Defendant Regional Superintendent of Schools Schermerhorn's Cross Motion for Summary Judgment and Response to City of Crystal Lake's Motion for Summary Judgment* (the "Regional Superintendent's Motion for Summary Judgment"). Further, on that day, the Plaintiffs also filed *Plaintiffs' Supplemental Memorandum of Law to the City of Crystal Lake's Memorandum of Law in Support of the City's Motion for Summary Judgment* (the "Plaintiff's Supplemental Memorandum").

On October 17, 2013, the District 155 Board filed *School District's Motion to Strike Plaintiffs' Supplemental Memorandum of Law* (the "Motion to Strike"), which sought relief with regard to certain portions of the Plaintiff's Supplemental Memorandum. On that day, the City also filed *City of Crystal Lake's Reply in Support of its Motion for Summary Judgment and Response to School District's Cross-Motion for Summary Judgment*. Further, on that day, the

Plaintiffs filed *Plaintiffs' Supplementary Response in Opposition to the District's Cross Motion for Summary Judgment and in Support of City's Motion for Summary Judgment*.

On October 22, 2013, the Plaintiffs filed *Plaintiffs' Response to School District's Motion to Strike*.

On October 23, 2013, the Court heard the arguments of the parties through their attorneys on the Motion to Strike, and entered an *Order* which granted the same in part, and denied the same in part, and essentially allowed further filings.

On October 31, 2013, the District 155 Board filed *School District's Combined Reply in Support of Motion for Summary Judgment and Surreply to City's Motion for Summary Judgment*. On that same day, the Regional Superintendent also filed *Third Party Defendant Regional Superintendent of Schools Schermerhorn's Sur Reply in Opposition to Third Party Defendant Crystal Lake's Motion for Summary Judgment and Plaintiff's Supplemental Memorandum to Support Crystal Lake's Motion for Summary Judgment*.

On November 6, 2013, the City an additional *Appearance* was filed on behalf of the City.

On November 7, 2013, the Court heard the arguments of the parties through their attorneys on the pending motions for summary judgment and took the same under advisement.

On November 12, 2013, the Plaintiffs filed a *Motion to Amend Plaintiff's Name Nunc Pro Tunc* (the "Motion to Amend"), requesting that the Plaintiffs include "Jeff Gurba, Louis A. Bianchi Revocable Trust, and Jean M. Bianchi Revocable Trust" (as opposed to "Jeff Gurba and Louis and Jean M. Bianchi Revocable Trust" as previously stated).

On December 17, 2013, following an email exchange with the attorneys for the parties, the Court entered an *Agreed Order* which granted the Motion to Amend.

Now, in this *Memorandum Opinion*, the Court states its decision on the motions for summary judgment.

Jurisdiction and Venue

Initially, the Court finds it has jurisdiction over this case, in terms of its subject matter and the parties involved. The parties reside and otherwise operate in the County of McHenry in the State of Illinois. Further, no objection has been raised with respect to jurisdiction or venue.

Findings and Analysis

Section 2-1005 of the Code of Civil Procedure provides:

§ 2-1005. Summary judgments. (a) For plaintiff. Any time after the opposite party has appeared or after the time within which he or she is required to appear has expired, a plaintiff may move with or without supporting affidavits for a summary judgment in his or her favor for all or any part of the relief sought.

(b) For defendant. A defendant may, at any time, move with or without supporting affidavits for a summary judgment in his or her favor as to all or any part of the relief sought against him or her.

(c) Procedure. The opposite party may prior to or at the time of the hearing on the motion file counteraffidavits. The judgment sought shall be rendered without delay if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages.

(d) Summary determination of major issues. If the court determines that there is no genuine issue of material fact as to one or more of the major issues in the case, but that substantial controversy exists with respect to other major issues, or if a party moves for a summary determination of one or more, but less than all, of the major issues in the case, and the court finds that there is no genuine issue of material fact as to that issue or those issues, the court shall thereupon draw an order specifying the major issue or issues that appear without substantial controversy, and directing such further proceedings upon the remaining undetermined issues as are just. Upon the trial of the case, the facts so specified shall be deemed established, and the trial shall be conducted accordingly.

(e) Form of affidavits. The form and contents of and procedure relating to affidavits under this Section shall be as provided by rule.

(f) Affidavits made in bad faith. If it appears to the satisfaction of the court at any time that any affidavit presented pursuant to this Section is presented in bad faith or solely for the purpose of delay, the court shall without delay order the party employing it to pay to the other party the amount of the reasonable expenses which the filing of the affidavit caused him or her to incur, including reasonable attorney's fees, and any offending party or attorney may be adjudged guilty of contempt.

(g) Amendment of pleading. Before or after the entry of a summary judgment, the court shall permit pleadings to be amended upon just and reasonable terms.

735 ILCS 5/2-1005.

“The purpose of summary judgment is not to try a question of fact, but to determine whether one exists.” *Land v. Bd. of Educ. of City of Chicago*, 202 Ill. 2d 414, 421 (2002).

“Summary judgment is proper where pleadings, depositions, admissions, and affidavits on file, when viewed in the light most favorable to the nonmoving party, reveal that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law.” *Id.*

“Where a reasonable person could draw divergent inferences from undisputed facts, summary judgment should be denied.” *Outboard Marine Corp. v. Liberty Mut. Ins. Co.*, 154 Ill. 2d 90, 102, 607 N.E.2d 1204, 1209 (1992).

The Facts at this Stage

In reviewing the facts presented by the parties at this stage of the litigation, the Court is mindful to focus on and consider facts which are not in dispute, with reasonable inferences drawn from the same. To the extent other stages follow (i.e., trial), additional facts can be adjudicated. Following careful review of the motions for summary judgment and related filings, the Court finds the following facts are not in dispute.

The City is a municipal corporation operating under the laws of the State of Illinois. The City has home-rule authority. The City is located in the County of McHenry in the State of Illinois. On April 21, 2009, the City adopted the Crystal Lake Unified Development Ordinance (the "UDO"), which took effect on July 21, 2009. The UDO collects the City's various zoning and land use ordinances into a single document. The City also adopted a Stormwater Management Ordinance (the "CLSO"), which took effect on January 1, 2005.

The District 155 Board is a body of local government that maintains a high school campus known as CLS. CLS is located on real property which is commonly known as 1200 South McHenry Avenue in the City of Crystal Lake in the County of McHenry in the State of Illinois. This property is owned by District 155. Included on this property is a football stadium.

On or about March 19, 2013, the District 155 Board approved a bid from Pepper Construction for a \$1.18 Million "bleacher improvement project" ("BIP") to take place at the football stadium. The BIP included removal of the former visitors' bleachers and the erection of a new grandstand for home-team fans and a press box in the same general area as the visitors' bleachers had been previously located. On or about May 20, 2013, construction began on the BIP. The District 155 Board never sought a building permit, zoning approval, or storm water management approval from the City for the BIP. Once constructed, the capacity of the bleachers will be increased. The area in which CLS is located is zoned "R-2 residential single family", and its use constitutes "a legal nonconforming use". The increase in square footage through the BIP increases the nonconformity and creates a more intensive use.

The District 155 Board asserts that it, CLS, and the BIP are not subject to the UDO and CLSO, and that the District 155 Board has refused to submit to the City's zoning authority. The District 155 Board has never sought or received a building permit, zoning approval, or storm

water management approval from the City for the BIP. Notwithstanding the assertions of the District 155 Board, however, the BIP is of the character that would make it otherwise subject to the UDO and CLSO. Further, however, the District 155 Board sought and obtained building permits from the Regional Superintendent for construction upgrades at CLS.

The District 155 Board's territory includes all or portions of the following municipalities: Bull Valley, Burton's Ridge, Cary, Crystal Lake, Fox River Grove, Lake in the Hills, Oakwood Hills, Prairie Grove, and Ridgefield. The District 155 Board owns and operates high schools in Crystal Lake and Cary. On or about May 20, 2013, the Regional Superintendent issued a building permit to the District 155 Board for the BIP.

The Regional Superintendent is an individual who, at all times relevant to this case, has been the duly appointed or elected McHenry County Regional Superintendent of Schools. The Regional Superintendent has the duty to review plans and specifications for school construction projects to determine compliance with the requirements of the Illinois Health/Life Safety Code for Public Schools, which is the governing code for public schools, and to issue building permits for said approved projects as provided by the Illinois School Code.

On or about May 15, 2013, the Regional Superintendent confirmed receipt of an application (among other applications) for a building permit for an outside bleacher demolition and reconstruction (including a press box) project at CLS. The Regional Superintendent had not received any request from the City to review plans and specifications for school construction projects. The Regional Superintendent reviewed the proposed plans and specifications for the project based on the standards in the Illinois Health/Life Safety Code. On or about May 20, 2013, the Regional Superintendent issued a building permit for the project.

The City's Motion for Summary Judgment

In the City's Motion for Summary Judgment and related filings, the City contends *that* there are no issues of material fact in dispute with regard to the Third Party Complaint, *that* the District 155 Board is subject to the City's zoning and storm water ordinances, *and that* judgment should be entered in its favor.

Further, the City argues for a declaration of rights in its favor. The City argues that the District 155 Board is obligated to comply with its zoning and storm water requirements, including submission of plans to its Planning & Zoning Commission, public hearing, and deliberation by the Crystal Lake City Council.

Further, as a home-rule municipality, the City argues it can create and enforce zoning ordinances, with no limitation on its authority over other bodies of local government. Contrariwise, the City argues the District 155 Board is a non-home-rule body of local government, which is only able to exercise the powers which are specifically granted to it. In particular, the City notes a school district's ability to seek zoning changes, variations, and special uses.

Further, however, the City concedes no specific constitutional provision or ordinance directly resolves how the interests of two units of local government should be resolved on land use issues. Nevertheless, the City also argues such units should work together whenever possible.

Further, the City argues its zoning and storm water ordinances are applicable to the BIP and will not thwart the objectives of the District 155 Board. The City argues for intergovernmental cooperation.

Finally, the City argues the Regional Superintendent should not be able to prevent the City from asserting its zoning and storm water authority. The City acknowledges the Regional Superintendent has certain building code authority, but argues such authority is related but distinct, and aimed at different considerations. While building codes under the School Code focus on those who use school facilities, municipal zoning and storm water codes focus on community character and the expectations of residents - "the compatibility of uses, buildings or structures with the character of the surrounding development". City's Motion for Summary Judgment at 15. "[T]he Regional Superintendent could find the [BIP] compatible with the life and safety issues within her province but the project could still be contrary to the health, safety, and well being of the neighbors." *Id.* "There is no enumerated duty [for the Regional Superintendent] to review or consider zoning or storm water issues." *Id.*

The District 155 Board's Motion for Summary Judgment

In the District 155 Board's Motion for Summary Judgment and related filings, the District 155 Board similarly contends there are no issues of material fact in dispute, *but that* the District 155 Board is not subject to the City's zoning and storm water ordinances, *and that* judgment should be entered in its favor.

Further, the District 155 Board argues, "Education is a matter of statewide concern." District 155 Board's Motion for Summary Judgment at 3. The District 155 Board argues plenary power over schools is vested in the General Assembly of the State of Illinois.

Further, the District 155 Board argues the General Assembly enacted a comprehensive scheme for the creation, management, and operation of schools. The District 155 Board explains how the General Assembly created a three-tiered system, with delegation of the inspection and

survey of public schools to regional superintendents of schools - in the second tier.⁴ As well, the District 155 Board argues, local school boards - in the third tier - are delegated certain authority over school property. The District 155 Board argues, "When the General Assembly wanted to give third parties authority over schools, the General Assembly specifically provided for it." *Id.*

Further, the District 155 Board argues that no single provision requires that school construction comply with municipal regulation. Nevertheless, the District 155 Board explains that a municipality can participate in a regional superintendent's review and approval of plans for new school construction. The District 155 Board, however, argues municipalities are prohibited from imposing additional restrictions upon plans and specifications for school construction. Nevertheless, the District 155 Board argues that a local school board's statutory authority to seek zoning changes, variations, and special uses does not provide for a contrary result.

Finally, the District 155 Board argues the City's reliance on *Wilmette Park Dist. v. Village of Wilmette*, 112 Ill.2d 6 (1986), is misplaced where that case involved a park, rather than a school, district, especially where the General Assembly has not granted park districts exclusive authority to operate parks. The District 155 Board argues "school property is effectively State property, and thus not subject to municipal regulation." District 155 Board's Motion for Summary Judgment at 12. The District 155 Board also argues municipalities cannot impose zoning requirements on the State where it is carrying out a statewide scheme, and on entities which operate in more than one municipality.

⁴ The first tier involves the Illinois State Board of Education with certain responsibility for educational policies and guidelines for public schools.

The Regional Superintendent's Motion for Summary Judgment

In the Regional Superintendent's Motion for Summary Judgment and related filings, the Regional Superintendent argues *in sync* with the District 155 Board.

Further, the Regional Superintendent argues, "The Illinois School Code . . . presents a detailed and exhaustive groundwork for virtually all aspects of public school operation in the state . . . including, but not limited to, governance, finances, taxes and revenue, discipline, teacher employment, instruction, transportation and construction." Regional Superintendent's Motion for Summary Judgment at 3. "What is glaring in its absence is any authority granted to municipalities." *Id.* at 4. As with the argument of the District 155 Board, the Regional Superintendent also notes reference to the State Fire Marshall's authority to conduct school safety checks, a school board's authority to seek zoning changes for school property, and a municipality's ability to participate in the process of a regional superintendent in the review and approval of construction projects.

The Position of the Plaintiffs

In the Plaintiff's Supplemental Memorandum and related filings, the Plaintiffs generally argue *in sync* with the City.

Further, the Plaintiffs argue the distinction *between* building and construction, *and* zoning and related matters. The Plaintiffs explain that this case does not concern jurisdiction over building; instead, the Plaintiffs argue this case concerns regulatory authority over zoning including limitations on height, bulk, setbacks, and use. As well, the Plaintiffs argue that the statutes at issue are not ambiguous.

Further, the Plaintiffs disagree with the District 155 Board's contention that a municipality is preempted from enforcing zoning regulations against entities that span across multiple municipalities.

Further, the Plaintiffs argue the ability of a school district to seek zoning changes defeats the District 155 Board's claim of preemption.

Further, the Plaintiffs argue the District 155 Board's claim of preemption is not well-founded, claiming that the City's home-rule authority has not been limited by the legislature. "As opposed to school districts, with their constitutional strictures, home rule municipalities are given a wide range of discretion." Plaintiff's Supplemental Memorandum at 10.

Finally, the Plaintiffs argue that their due process rights have been violated. The Plaintiffs argue they were denied any opportunity to defend their property rights or be heard, *that* no notice for the project was published, *that* no notice was sent directly to them, *and that* no sign was posted on the property. "In sharp contrast, the City of Crystal Lake has extensive and detailed procedures in place to afford all interested parties the opportunity to participate and to be heard." *Id.* at 13.

Discussion

This case involves a question of law, and the ability of a school district in the State of Illinois to operate without deference to the zoning and storm water management codes of a municipality in which the school district is located.

More practically, this case involves whether and to what extent an expanded set of bleachers for a football stadium can remain, especially in consideration of the \$1.18 Million spent on the same. In this case, however, the practical must be governed by that which is legal.

Interestingly, and notwithstanding the vociferous arguments of the Plaintiffs over Due Process, the Court generally finds those arguments to be involved with various elements of this case, but not primarily germane to the salient issues provided to the Court. And, to be clear, the constitutionality of the statutes and ordinances at issue is not being challenged.

As discussed in open court and below in this Memorandum Opinion, the parties have been unable to cite any case law which is on point and otherwise controlling. Accordingly, the question of law noted above appears to be a matter of first impression.

Based on the plain language of the statutes, the City maintains authority over the District 155 Defendants and CLS, with regard to zoning and storm water management.

The City's arguments are largely based on the provisions of Section 11-13-1 of the Municipal Code which states, in its beginning:

§ 11-13-1. 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; the corporate authorities in each municipality have the following powers:

- (1) to regulate and limit the height and bulk of buildings hereafter to be erected;
- (2) to establish, regulate and limit, subject to the provisions of Division 14 of this Article 11, the building or set-back lines on or along any street, traffic-way, drive, parkway or storm or floodwater runoff channel or basin;
- (3) to regulate and limit the intensity of the use of lot areas, and to regulate and determine the area of open spaces, within and surrounding such buildings;
- (4) to classify, regulate and restrict the location of trades and industries and the location of buildings designed for specified industrial, business, residential, and other uses;
- (5) to divide the entire municipality into districts of such number, shape, area, and of such different classes (according to use of land and buildings, height and bulk

of buildings, intensity of the use of lot area, area of open spaces, or other classification) as may be deemed best suited to carry out the purposes of this Division 13;

(6) to fix standards to which buildings or structures therein shall conform;

(7) to prohibit uses, buildings, or structures incompatible with the character of such districts;

(8) to prevent additions to and alteration or remodeling of existing buildings or structures in such a way as to avoid the restrictions and limitations lawfully imposed under this Division 13;

(9) to classify, to regulate and restrict the use of property on the basis of family relationship, which family relationship may be defined as one or more persons each related to the other by blood, marriage or adoption and maintaining a common household;

(10) to regulate or forbid any structure or activity which may hinder access to solar energy necessary for the proper functioning of a solar energy system, as defined in Section 1.2 of the Comprehensive Solar Energy Act of 1977;

(11) to require the creation and preservation of affordable housing, including the power to provide increased density or other zoning incentives to developers who are creating, establishing, or preserving affordable housing; and

(12) 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; except that, other than reasonable restrictions as to size, no home rule or non-home rule municipality may prohibit the display of outdoor political campaign signs on residential property during any period of time, the regulation of these signs being a power and function of the State and, therefore, this item (12) is a denial and limitation of concurrent home rule powers and functions under subsection (i) of Section 6 of Article VII of the Illinois Constitution.

65 ILCS 5/11-13-1 [hereinafter Section 11-13-1]. Section 11-13-1 essentially establishes the zoning power for municipalities. Incumbent in the same is a municipality's power over storm water management.

Under Section 11-13-1, the City has the power to enact its zoning and storm water management codes, and more specifically, its UDO and CLSO. This power is broadly granted, and limitations are gingerly referenced. Among other items, the language of Section 11-13-1

does not impose limitations on a municipality's ability to prevent additions to and alteration or remodeling of existing buildings or structures. 65 ILCS 5/11-13-1(8).

The increases at issue through the BIP fall subject to such power, and no limitation is stated with respect to the same.

Contrariwise, the District 155 Board argues it has the power to determine zoning and storm water issues for public schools under Section 10-20 of the School Code, 105 ILCS 5/10-20 [hereinafter Section 10-20]. Section 10-20 states (with *emphasis* added):

Sec. 10-20. Powers of school board. *The school board has the powers enumerated in the Sections of this Article following this Section.* This enumeration of powers is not exclusive, but **the board may exercise all other powers not inconsistent with this Act that may be requisite or proper for the maintenance, operation, and development of any school or schools under the jurisdiction of the board.** This grant of powers does not release a school board from any duty imposed upon it by this Act or any other law.

Among the *powers enumerated in the sections of Article 10 which follow Section 10-20*, however, is that which is found in Section 10-22.13a (with *emphasis* added):

Sec. 10-22.13a. Zoning changes, variations, and special uses for school district property. **To seek zoning changes, variations, or special uses for property held or controlled by the school district.**

105 ILCS 5/10-22.13a [hereinafter Section 10-22.13a]. Again, the School Code specifically states, "This grant of powers does not release a school board from any duty imposed upon it [under the School Code] or any other law." 105 ILCS 5/10-20. While the Court is unable to locate case law which imposes a duty on a school board to seek zoning relief when required, the interplay between these two sections strongly suggests, if not mandates, the same.

Further, the City relies upon *Wilmette Park District v. Village of Wilmette*, 112 Ill.2d 6 (1986). In that case, the Wilmette Park District brought action against the Village of Wilmette, challenging the Village's revocation of an electrical permit. *Id.* at 10. In that case, the Court recognized, "[T]he Illinois Municipal Code authorizes all municipalities . . . to adopt zoning

ordinances which divide the entire municipality into zoning districts.” *Id.* (citing Ill.Rev.Stat.1983, ch. 24, par. 11-13-1.1). The Supreme Court recognized the Wilmette Park District wanted to add significant lighting structures on its athletic fields, “which is a proper park purpose under the Park District Code.” *Id.* at 13 (citing Ill.Rev.Stat.1983, ch. 105, par. 8-1). In that case, the Park District took “the position that because the General Assembly has granted park districts authority to operate parks, it impliedly follows that the legislature intended to confer zoning immunity to park districts in instances where zoning may affect park operations.” *Id.* at 14. However, the Court found “no merit in this argument.” *Id.* The Court described how “[a]bsent an explicit statutory grant of immunity, the mere fact that the park district, a local unit of government, has a statutory duty to operate its parks cannot be extended to support the inference that it can exercise its authority without regard to the zoning ordinances of its host municipality.” *Id.* at 14-15.

Further, the Park District argued that its duties to operate parks had been frustrated and thwarted because the Village’s “revocation of the electrical permit for the Village Green lights prevented it from conducting planned evening events on the Village Green.” *Id.* at 14. The Court recognized the argument, but described how “it is obvious the revocation of the electrical permit was a result or consequence of the park district's refusal to participate in the zoning process and not of its administration.” *Id.* The Court went on to hold that the Park District was not exempt from zoning ordinances of the home rule municipality, and that park district was required to apply for special use permit to install new lights at the athletic field. *Id.* at 6.

In the instant case, the District 155 Board, like the Wilmette Park District, is attempting to argue that because the School Code gives the District 155 Board the power to operate and maintain CLS, this power includes that which pertains to zoning and storm water management.

Assuming *arguendo* the District 155 Board has power over zoning and storm water management, with apparent conflict between the same and the City's similar power, one must consider if the District 155 Board's duties to operate schools have been frustrated and thwarted. Here, those duties have not been frustrated or thwarted. The District 155 Board, as in the *Wilmette Park District* case, is simply suffering consequences, not as a result of participating in the zoning process of the home rule municipality, but because of its own refusal to do so.

Further, a different circumstance would exist if the City was attempting to impact the Regional Superintendent's implementation of building codes, *because* such power is explicitly granted in the *School Code*. See 105 ILCS 5/10-21.4. By denying the Regional Superintendent and the District 155 Board that right, the same would then directly contradict a power enumerated to this local governmental entity. However, that is not this case. Here, the School Board does not have explicit power regarding zoning or storm water ordinances, and impacting the District 155 Board's power regarding the same would not thwart its overall duties to operate schools.

The *Wilmette Park District* case is not directly on point, and does not carry the argument for the City and the Plaintiffs; instead, however, it helps their argument. Similarly, the District 155 Board and the Regional Superintendent cite cases which are not directly on point, and which do not carry the argument for them. Their citations similarly help their argument but do not win it for them.

Moreover, the Regional Superintendent refers to powers concerning school building codes (105 ILCS 5/2-3.12), building plans and specifications (105 ILCS 5/3-14.20), inspections of schools (105 ILCS 5/3-14.21), miscellaneous duties of school boards (105 ILCS 5/10-21), and zoning as discussed above (105 ILCS 5/10-22.13a), and argues how others may participate in the

process of the Regional Superintendent. In particular, she explains how the State Fire Marshall may participate, and also how a municipality may participate in certain reviews.

Again, however, at issue in this case is the zoning power which is cherished by those who have it. *Notwithstanding the legions of section of the School Code which cover various powers for regional superintendents, school districts, and school boards*, other than Section 10-22.13a, no portion of the School Code specifically addresses and otherwise provides power over zoning (and related items like storm water management) to regional superintendents, school districts, and/or school boards.

While the District 155 Defendants and the Regional Superintendent should continue to be able to fully engage school purposes, especially with the *various* grants of power provided under the School Code, the City should continue to be able to fully engage municipal purposes which include specific power over zoning.

In sum, the Court generally agrees with the arguments of the City and the Plaintiffs.

Conclusion

The City's Motion for Summary Judgment should be granted, the District 155 Board's Motion for Summary Judgment should be denied, and the Regional Superintendent's Motion for Summary Judgment should be denied. Contemporaneous herewith, the Court will enter an Order Awarding Summary Judgment in Favor of the City.

Dated: December 18, 2013

ENTERED:

Michael J. Chmiel
Circuit Judge