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ILLINOIS STATE BAR ASSOCIATION

# Local Government Law

*The newsletter of the Illinois State Bar Association's Section on Local Government Law*

## A look at *Meade v. City of Rockford:* settling agreements with a municipality

*By Lisle A. Stalter*

All attorneys representing government entities have been there, ordered to participate in a settlement conference or mediation. The rules require all parties to have someone with settlement authority participate and can even provide that they have the ability to meaningfully negotiate toward a settlement and be able to bind the party to an enforceable settlement order. The thoughts run through your head … "is it really reasonable to bring the whole council to court" and "how does my client comply with the Open Meetings Act and the court's order?" "Doesn't the court know that any settlement would require council action at a properly noticed meeting?" And, may even be wondering "what happens if the city council doesn't approve the settlement?"

The Second District recently had the opportunity to opine on this issue in *Meade v. City of Rockford*.[1] The court's discussion is enlightening to the settlement process for local governments.

### The Facts

The Plaintiff, Jane Meade, was injured when she was standing on the parkway near a street in the City of Rockford when the ground gave

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## Intergovernmental cooperation and conflict: A fresh look

*By Donna J. Pugh & Melissa D. Conroy*

*Gurba v. Community High School District Number 155* presented an issue of first impression in Illinois: whether local school boards of education and school districts must comply with a homeruleunit's zoning ordinances.[1] Variations on this question have been posed throughout the last century, including: whether a park district must comply with the host municipality's zoning ordinances;[2] whether a public library district must follow a county's zoning ordinances in choosing placement of a library or other government building;[3] whether a city's zoning ordinance is preempted by state laws regarding hazardous substances or other environmental matters;[4] and whether a city's zoning ordinance is preempted by a state agency's regulations or decisions regarding health safety and building codes[5] or the placement of regional bus facilities;[6] or whether a local zoning ordinance will prevail over a statutorily created entity attempting to complete the tasks for which it was created.[7] What follows is a brief survey detailing how Illinois courts have addressed this question (1) in the realm of park districts and library districts, (2) when dealing with public utilities or environmental matters, (3) when faced with an agency of broad geographic scope, and (4) in school districts. We turn first to park and library districts.

### Park Districts and Library Districts

In *Wilmette Park District v. Village of Wilmette*, the Illinois Supreme Court was asked to deter-

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## Intergovernmental cooperation and conflict: A fresh look

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mine the narrow issue of "whether a park district, in exercising its statutory authority over the operation of its parks, is exempt from zoning ordinances of its host municipality."[8] Here, the Wilmette Park District consolidated two parcels of land to form a recreational park area.[9] One of the two parcels was sold to the Village of Wilmette, who leased the site to the park district.[10] Per the lease terms, the park district was responsible for general improvements to the land, including certain lighting improvements to athletic fields.[11] While completing the installation of new lights, the park district failed to obtain a special use permit from the Village of Wilmette to comply with applicable zoning ordinances.[12] In reaching its conclusion that the park district was bound to follow the zoning ordinance, the court noted that "[a]bsent an explicit statutory grant of immunity, the mere fact that the park district, a local unity 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."[13] Thus, provided the administration of the zoning ordinance was not "unreasonable, arbitrary, or discriminatory," the park district's statutory duty to maintain the park could not be exercised without complying with the zoning ordinance.[14] A mere handful of years later, the Illinois Attorney General was asked to opine on the same issue—this time as applied to a public library district rather than a park district.

In a 1991 opinion, Illinois Attorney General Roland W. Burris answered the question of "whether a public library district may construct a library building on property it owns within its territorial limits without regard to county zoning regulations."[15] Here, the attorney general was presented with a county zoning ordinance, not a municipal zoning ordinance.[16] The attorney general ultimately opined that a library district need not comply with a county zoning ordinance's classifications when choosing where to locate a library, provided that the library district's exercise of such power is not "arbitrary or unreasonable."[17] The statutory authority empowering a county to enact zoning ordinances provided no exemption from compliance with a county zoning ordinance for a library district, but it also did not "explicitly subject[] a library district's choice of location of a library to the zoning authority of the county board."[18] While seemingly a departure from *Wilmette*, the attorney general justified his position by noting that "[n]othing in the [*Wilmette*] opinion, however, suggests that the municipality could have prevented the park district from locating its park where it chose to, or from conducting thereon ordinary park functions."[19] Indeed, in crafting his opinion, the Illinois Attorney General relied instead on a much earlier Illinois Supreme Court park district case: *Decatur Park District v. Becker*.

In the 1938 case of *Decatur Park District v. Becker*, appellants Clara and Ida Becker brought the case before the court after the Decatur Park District condemned their land for park purposes. Here, the Illinois Supreme Court was faced with determining several issues, including whether "the zoning ordinance of the city of Decatur prohibits [the Decatur Park District] from taking [the tracts of land] for park purposes, because they were zoned 'A' residence property, and public parks could not be located there."[20] In reaching its conclusion that the condemnation was not a violation of Illinois law, the court found that the Park District "is given authority to locate parks, and the city is given authority to adopt a zoning ordinance."[21] Further, the court held that "[t]he legislature did not empower cities to exclude parks from residence districts."[22] As such, the court found that the ordinances establishing the tract's zoning designation and enabling the park district to condemn the land for park use should be construed to give both effect.[23] When compared to *Wilmette* and the Attorney General Opinion, this case illustrates the difference between a choosing *where* to locate a park and *how* to construct the park, both tasks for which the entity was created: so long as the local zoning ordinance does not completely thwart the purpose of the entity—so long as the park district is still able to construct a park or a library district is still able to construct a library—compliance may be required. However, when the effect of the local ordinance is to strip the statutorily created entity of its power to complete the tasks for which it was created, the local ordinance will not be enforced. A similar concept can be seen in the manner in which courts will enforce (or refuse to enforce) local ordinances that attempt to regulate environmental matters or public utilities.

### Environmental Matters and Public Utilities

The Illinois Supreme Court was asked to determine "whether a village zoning ordinance is preempted by a requirement set forth in a permit issued by the Environmental Protection Agency (Agency) under the provisions of the Environmental Protection Act" in *Carpentersville v. Pollution Control Board*.[24] In this case, Cargill, a company that manufactured resins for paint, requested a zoning variance to comply with a direction from the Agency to increase the height of its incinerator discharge stacks.[25] When the Village of Carpentersville denied the variance, Cargill brought the matter before the Pollution Control Board, which subsequently determined that the Village of Carpentersville's ordinance was preempted by state law.[26] The Village of Carpentersville proceeded to appeal the Pollution Control Board's decision to an appellate court, and the case was eventually presented to the Illinois Supreme Court.[27] Pointing to an amendment to section 39(c) of the Act,[28] the court found "the General Assembly has determined that, under the Act, the zoning powers of local governmental units, both home rule and nonhome rule, should be broader than the minimum powers to share concurrent jurisdiction with the State that are provided for in section 6 of article VII [of the Illinois Constitution]."[29] Thus, the court held that the Village of Carpentersville's ordinance specifically at issue in this case—and local zoning ordinances generally—will not be preempted by the Act, regardless of whether the ordinance was enacted by a home-rule or a nonhome-rule municipality.[30] As with the *Wilmette* case, enforcing the local ordinance would not thwart the legislature's intent in enacting and amending the state statute at issue. In interpreting Illinois state law, federal district courts have similarly applied this concept when asked to grapple with the question of whether a municipality's zoning ordinance will control.

In *Village of DePue v. Viacom International, Inc.*, the Central District of Illinois was faced

with determining the impact of a municipality's ordinance when applied to a contamination site for which the Illinois Environmental Protection Agency had required certain investigations pursuant to the Illinois Environmental Protection Act (the "IEPA").[31] The Village of DePue eventually passed a hazardous waste and hazardous substances ordinance prohibiting the possession of real property containing either hazardous waste or hazardous substances and imposing a daily fine for such possession.[32] In its analysis resolving the issue, the district court utilized the Illinois Supreme Court's three-factor test for determining the constitutional validity of the exercise of homerule power: (1) the exercise "must pertain to the municipality's government and affairs," (2) "the Illinois General Assembly must not have specifically preempted the power or function that the municipality seeks to exercise," and (3) provided prongs (1) and (2) are met, the "proper relationship between the local ordinance and the relevant state statute" must be determined.[33] Here, the determining factor proved to be the third prong: the relationship between the DePue ordinance and the IEPA. Even though homerule municipalities have broad authority to regulate matters pertaining to the health and safety of their citizens, the state has primacy in regulating environmental matters.[34] Because the Illinois Supreme Court has interpreted the Illinois constitutional provision stating the Illinois's public policy on environmental matters to mean that the General Assembly will "'provide leadership and uniform standards with regard to pollution control,'" municipalities wishing to enact ordinances covering the same must "stay within the boundaries of uniform state-selected standards."[35] The Village of DePue's ordinance overstepped the bounds of the state's action; it conflicted with Illinois's uniform standard of environmental protection and thus was held unenforceable as an invalid exercise of home-rule authority.[36] Unlike *Carpentersville*, the local ordinance here proved too oppressive to concurrently exist with and regulate the same field as the state statute.

In *County of Lake v. Fox Waterway Agency*, the court was asked to determine whether the county's ordinances would prevail against a "statutorily created entity that possesses the statutory authority to engage in precisely the activities" which the county sought to regulate—that is, whether the local ordinance promulgated by the Lake County Stormwater Management Commission (the "Commission") would prevail against the statutorily created entity specifically authorized by state statute to complete its tasks.[37] The Fox Waterway Agency (the "FWA") began working on a project in Lake County to recover and rebuild lost square footage on Grass Island.[38] Part of the project involved raising the floodplain elevation on Grass Lake; thus, the FWA obtained necessary permits from the Illinois Department of Natural Resources and the Chicago District of the United States Army Corps of Engineers prior to beginning the project.[39] However, the FWA did not apply for a permit from the Commission, which Lake County contended was a violation of the Commission's watershed development ordinance.[40] Citing *Wilmette*, Lake County argued a permit was necessary because the project was located within Lake County; as such, the two "governmental entities carrying out [their] statutory duties" should work together "to achieve cooperation between the independent units of local government."[41] The appellate court disagreed, holding that the "specific duties and powers granted to defendant by the Fox Waterway Agency Act . . . exempt the [FWA] from the commission's permit requirement."[42] As with *Carpentersville* and *DePue*, the court instead turned to the legislature's intent to determine whether compliance would be necessary. Here, the underlying conflict involved a state statute, the Fox Waterway Agency Act, and a county ordinance, which the court viewed as two unequal pieces of legislation.[43] As such, the court notes that in situations where "two unequal legislative bodies have inconsistent enactments, the enactment of the more powerful body will preempt that of the lesser."[44] Thus, the FWA was exempt from applying for and obtaining a county permit.

The general concept has also been applied to the regulation of public utilities. In *Commonwealth Edison Company v. City of Warrenville*, the issue revolved around a city's ability to use zoning ordinances to halt or regulate public utility companies that are otherwise subject to state regulation.[45] Here, the Illinois Commerce Commission, as a regulatory body under the Illinois Public Utilities Act (the "PUA"), provided Commonwealth Edison Company ("ComEd") with a certificate of public convenience to construct a new electric service line near Warrenville.[46] Warrenville objected, arguing that its zoning ordinances prohibited ComEd from undertaking the necessary construction without first obtaining special use permits.[47] In reaching its conclusion on the issue, the court considered the matter for both homerule and non-home-rule units. Regarding homerule units, the court found that when "an ordinance enacted by a homerule unit does not pertain to that unit's government affairs, a state statute regarding the matter will preempt the ordinance," especially where, as here, the Commission specifically authorized the construction.[48] Similarly, when non-home-rule units pass zoning ordinances that "conflict with the spirit and purpose of a state statute," those zoning ordinances are preempted.[49] Thus, because regulating public utilities is a statewide concern—not a concern pertaining specifically to local governments—the PUA preempted the enforcement of the Warrenville ordinance.[50] The analysis of this case introduces an additional factor for consideration not heavily relied on in cases previously discussed: whether the statutorily created entity covers an area of broad geographic scope or whether it completes its statutory duties within the confines of a single municipality. As will be discussed next, when the statutorily created entity exists to serve multiple municipalities—or the entire state—the entity may not be forced to comply with a local ordinance.

## Agencies of Broad Geographic Scope

The Northern District of Illinois was asked to determine whether the state's regulations as promulgated by the Illinois Department of Human Services would preempt a municipality's conflicting life safety code.[51] In *Affordable Recovery Housing v. City of Blue Island*, Affordable Recovery Housing ("ARH"), an Illinois notfor-profit corporation, sought to operate a recovery home.[52] In so doing, ARH obtained a license to operate the home from the Illinois Department of Human Services (the "DHS").[53] As part of its statutory grant of authority, the DHS was empowered to enact regulatory schemes to regulate such recovery homes.[54] The DHS's regulations did not require the installation of sprinkler systems in recovery homes; however, the 2012 Life Safety Code for recovery home's host municipality, the City of Blue Island, did require sprinkler systems.[55] After discovering that ARH did not comply with the City of Blue Island's codes, the fire chief asked ARH to vacate its premises.[56] ARH subsequently filed

suit, asking the court to determine whether the City of Blue Island's 2012 Life Safety Code required installation of a sprinkler system or whether the DHS's regulations preempted the Life Safety Code.[57] In determining that the DHS's regulations would preempt the City of Blue Island's Life Safety Code, the court pointed out that, when dealing with a "non-home rule unit—like the City of Blue Island—legislative intent to preempt [the municipality's ordinance] may be implied"; it need not be explicitly stated as required to preempt a home-rule unit's exercise of authority.[58] Per the "doctrine of preemption by implication, 'where the legislature has enacted a *comprehensive system of regulation and licensure* . . . the legislature implies by that system that there is no room for regulation by local governmental units,'" and the regulations of an agency "may preempt a local ordinance, just as a statute may."[59] Ultimately, the City of Blue Island's more restrictive Life Safety Code was preempted by the DHS's regulations because the state had enacted a "comprehensive regulatory scheme."[60] In contrast to prior cases, like *Carpentersville*, the regulations themselves did not call for concurrent or joint legislation, nor was the license to operate a recovery home conditioned upon compliance with the City of Blue Island's ordinances.[61] Because the DHS exists to serve the entire state, its regulations will prevail over conflicting local ordinances. Thus, the City of Blue Island was barred from enforcing its own Life Safety Codes against ARH.[62]

In *City of Evanston v. Regional Transportation Authority*, the appellate court was again faced with determining whether a municipality's zoning ordinance would stand as applied to a state agency.[63] Here, the Regional Transportation Authority (the "RTA") and PACE, its suburban bus division, sought to build a bus garage and maintenance facility in Evanston.[64] However, a City of Evanston zoning ordinance would have required a special use permit for such a facility to exist in the proposed area.[65] The lower court granted summary judgment in favor of the RTA and PACE, ultimately finding that the agencies were not subject to the zoning ordinance at issue.[66] The City of Evanston appealed this order, arguing that the "RTA and PACE were subject to Evanston's zoning ordinance because zoning and land use planning are within its home rule powers," and the legislature did not intend to grant a regional authority immunity from local zoning ordinances because no specific exception is expressly stated in the RTA Act.[67] The appellate court ultimately disagreed with Evanston's arguments, holding that "the application of the Evanston zoning ordinance to the regional facility was not within the grant of home rule power."[68] Unlike in *Wilmette*, the regional authority here, the RTA, exists to serve an area that is broader than a single municipality. To allow Evanston to regulate in this situation would present a "'fundamental difficulty . . . incompatible with the [authority's] purpose.'"[69] Thus, as in the *Fox Waterway Agency* case, the statutorily created entity of broader geographic scope would not be compelled to comply with the local ordinance.

## School Districts

Perhaps the most recent case to come before Illinois courts on this issue, *Gurba v. Community High School District Number 155*, arose from the decision to replace bleachers in the city of Crystal Lake after a failed structural inspection.[70] With this decision, the school board for the Community High School District Number 155 chose to switch the positioning of the home and away bleachers.[71] After obtaining only approval from the superintendent and providing no notice to the city, construction for the project began.[72] Citing its zoning and stormwater ordinances, Crystal Lake objected.[73] More specifically, Crystal Lake argued that stormwater permits were necessary; that the area's zoning ordinance required a special use permit; the zoning ordinance imposed a height restriction on the new bleachers; and, ultimately, that the zoning ordinances were directly applicable to the school board and school district.[74] The trial court found in favor of Crystal Lake, and the school board appealed, arguing that the "[trial] court's ruling represented an unconstitutional infringement on the Board's and the Superintendent's power."[75]

In dismissing the school board's arguments and affirming the trial court's decision, the appellate court held that the school district was, in fact, subject to the city's zoning ordinances.[76] Stating that "the powers and functions of the home-rule unit are to be liberally construed," the court found that Crystal Lake could exercise its powers concurrently with the state—provided the legislature did not expressly preempt such exercise.[77] The appellate court went on to note:

Perhaps most importantly for our analysis here, home-rule-unit primacy is embodied in the express language of the constitution, which guarantees that, if a county-level home-rule unit's ordinances conflict with those of a municipalitylevel homerule unit, the municipality's ordinances will be given effect in the municipality's territory or jurisdiction. The primacy suggests a slight bias in favor of a local, or narrower, unit over a regional, broader unit.[78]

Following the logic of the *Wilmette* decision, the appellate court noted that "[r]equiring conformity to the City's zoning ordinances will not prevent the Board and the District from carrying out their duties to provide public education to the residents of the District."[79] Indeed, the City's ordinance did not prohibit the construction of a school, but rather, "[the City] is trying to get the reconstructed bleachers to comply with its zoning ordinances, so, once again, there is no issue of frustrating or preventing a regional entity from performing its statutory duties."[80] Additionally, while the District may serve more than one municipality geographically, the scope of the project did not. Thus, unlike the *Fox Waterway Agency* and *Regional Transportation Authority* cases, the statutorily created entity would need to comply with the local ordinances.

The Illinois General Assembly has taken steps to ensure that a controversy such as *Gurba* presented will not arise in the future. Most recently, on January 15, 2015, Senate Bill 0036 was prefiled to amend the Illinois School Code to explicitly codify what the General Assembly views as the existing law in this area: that school districts—and their school boards—must comply with any "valid local zoning ordinance or resolution" applicable to the location of the school district.[81] As of the publication of this article, the bill's fate has yet to be determined.[82]

## Conclusion

As can be seen from the case survey above, there is no single, clear-cut rule to determine whether a local ordinance will be enforced against a statutorily created entity and whether the local ordinance will prevail against a state statute. Rather, enforcement depends upon several factors and the circumstances in each situation. Courts will look to whether the local municipality is a homerule or a nonhomerule unit when determining whether to enforce the local ordinance. Whether the statutorily created entity is one of broad geographic scope or whether it operates only within the local municipality will

also affect the outcome. Additionally, courts will consider whether enforcing the local ordinance will thwart the purpose of the statutorily created entity—that is, whether enforcing the local ordinance will strip the statutorily created entity of its ability to complete the tasks for which it was created. Finally, courts will determine whether the General Assembly—either explicitly or implicitly—intended to preempt the field in which the local ordinance at issue attempts to regulate. ■

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1. 18 N.E.3d 149 (Ill. App. 2014), *appeal docketed*, No. 118332 (Ill. Jan. 28, 2015). The Supreme Court of Illinois is scheduled to hear oral arguments for this case on May 20, 2015. *See Docket Supreme Court of Illinois May Term 2015 Springfield*, Ill. Ct. (May 5, 2015, 10:00 A.M.) http://www.state.il.us/court/SupremeCourt/Docket/2015/0515.pdf.

2. *See Wilmette Park Dist. v. Vill. of Wilmette*, 112 Ill. 2d 6 (1986); *Decatur Park Dist. v. Becker*, 368 Ill. 442 (1938).

3. Applicability of Cnty. Zoning Ordinance to Constr. by Library Dist., Att'y Gen. Op. 59 (Ill. 1991) [hereinafter Att'y Gen. Op.].

4. *See Vill. of DePue v. Viacom Int'l, Inc.*, 632 F. Supp. 2d 854 (2009); *Carpentersville v. Pollution Control Bd.*, 135 Ill. 2d 463 (1990); *Commonwealth Edison Co. v. City of Warrenville*, 288 Ill. App. 3d 373 (1997).

5. *See Affordable Recovering Hous. v. City of Blue Island*, 2014 U.S. Dist. LEXIS 161106 (N.D. Ill.).

6. *City of Evanston v. Reg'l Transp. Auth.*, 202 Ill. App. 3d 265 (1990).

7. *Cnty. of Lake v. Fox Waterway Agency*, 326 Ill. App. 3d 100 (2001). Courts have also grappled with the question of whether a county's zoning ordinances may be enforced against a township road commissioner. *See Cnty. of Lake v. Semmerling*, 195 Ill. App. 3d 93 (1990). For additional discussion on the holding in the *Semmerling* case, see *infra* note 13.

8. *Wilmette Park Dist.*, 112 Ill. 2d at 9–10.

9. *Id.* at 10.

10. *Id.* at 11.

11. *Id.*

12. *Id.* at 11–13. "The village's zoning ordinance requires a special use permit for the conversion from nonpark use to park use or whether there is an expansion of park use. *Id.* at 18.

13. *Id.* at 15. *Accord Lake Cnty. Pub. Bldg. Comm'n v. City of Waukegan*, 273 Ill. App. 3d 15, 24 (1995) (affirming the trial court's decision and stating that "[g]iven the fact that Waugkegan's building regulations address purely local concerns and the lack of evidence that the Commission's functions will be thwarted by subjecting it to Waukegan's building regulations, we agree with the trial court in the present case"); *Cnty. of Lake v. Semmerling*, 195 Ill. App. 3d 97 - 98 (1990) ("Applying [the *Wilmette*] principles to the present case, we conclude that the plaintiff could enforce its zoning ordinance requiring defendant to apply for and obtain site-development permits for the tree projects at issue in this case. We recognize that defendant has certain duties regarding the maintenance and improvement of township roads within his jurisdiction, but plaintiff also has obligations to the health, safety and welfare of its inhabitants, including the prevention of soil erosion, flooding and related problems." (citations omitted)). The *Semmerling* court went on to say, "As in the *Wilmette Park District* case, the General Assembly has not granted the township road commissioner an explicit statutory grant of immunity from the zoning ordinances of its host unit of local government even though it has been granted sole responsibility to maintain and operate township roads." *Id.* at 99–100.

14. *Id.* at 19. *Accord Fountain Head Drainage Dist. v. City of Champaign*, 1987 Ill. App. LEXIS 3819, *13–14 (1987) (holding that "(1) the city has both a common law and statutory duty to repair and maintain existing structures such as footbridges; (2) the municipality in seeking to reconstruct or rebuild an existing structure must give notice to, and seek the approval of, District commissioners; (3) District consent should also be obtained for the construction of new bridges; (4) the District has no statutory authority to unreasonably withhold consent or to condition its approval upon the execution of a hold harmless provision; and (5) a court order is not required to review the approval of every reconstruction plan designed to change or correct an existing condition, or for the approval of every new construction plan").

15. Att'y Gen. Op., *supra* note 3.

16. *Id.*

17. *Id.* The attorney general restricted his opinion only to the choice of location for a facility. He also noted that for the operation of a facility, county zoning regulations may be applicable—provided that compliance would not "frustrate the purposes of the [library] district." *Id.*

18. *Id.*

19. *Id.* Indeed, he also noted that where the *Wilmette* case was concerned with the particular *use* of the land within a park (i.e., the addition of new lights that would affect the nearby residents), it did not address the *location* of the park itself. *See generally id.*

20. *Decatur Park Dist.*, 368 Ill. at 447.

21. *Id.* Note that the broadness of this holding was somewhat curtailed in *Heft v. Zoning Bd. of Appeals of Peoria Cnty.*, 31 Ill. 2d 266 (1964).

22. *Id.*

23. *Id.*

24. *Carpentersville*, 135 Ill. 2d at 465.

25. *Id.* at 465–66.

26. *Id.* at 466.

27. *Id.* at 466–67.

28. As Amended on November 12, 1981, Ill. Rev. Stat. 1987, ch. 111 1/2 par. 1039(c) read:

> No permit for the development or construction of a new facility other than a new regional pollution control facility may be granted by the Agency unless the applicant submits proof to the Agency that the applicant has secured all necessary zoning approvals from the unit of local government having zoning jurisdiction over the proposed new facility.

*Carpentersville*, 135 Ill. 2d 469.

29. *Id.* at 475.

> Because the General Assembly has failed to "specifically limit the concurrent powers or specifically declare the State's exercise to be exclusive," this court held that, despite the General Assembly's intent that the Act preempt local regulations, home rule units under the constitution must, at a minimum, be allowed to exercise concurrent powers in environmental matters. In the present case, however, the General Assembly, by amending section 39(c), has made it clear that it no longer intends for the Act to preempt local zoning ordinances.

*Id.* at 474–75 (quoting *Cnty. Of Cook v. John Sexton Contractors Co.*, 75 Ill. 2d 494, 514–15 (1979)). *Compare Metro. Sanitary Dist. v. Des Plaines*, 63 Ill. 2d 256, 262–63 (1976) (finding that the framers of the Illinois Constitution could not have intended "that home rule municipalities have the power to regulate regional or statewide environmental problems" ) with *City of Waukegan v. Illinois Envtl. Prot. Agency*, 339 Ill. App. 3d 963, 971, 972 (2003) (finding that the amendments to section 39(c) "make clear that the General Assembly intended to enlarge the role of local governments with respect to zoning" and that in "those cases governed by section 39(c) of the Act, the amendments to section 39(c) have overruled [*Metro. Sanitary Dist. v. Des Plaines*] and its predecessors"). The distinction as relates to section 39(c) is critical. As the *City of Waukegan* court made clear, "a local government may not require a regional entity acting within its statutory mandate to comply with local zoning ordinance." *City of Waukegan*, 339 Ill. App. 3d at 372. *See also City of Joliet v. Snyder*, 317 Ill. App. 3d 940, 941 (2000) (holding that "a municipality may not force the State to abide by its zoning ordinance requiring the State to apply for a special permit where the State is carrying out a statutory duty encompassing a statewide concern"). Regional entities must comply with local zoning ordinances when the dispute involves a statute—like section 39(c)—where "the General Assembly has provided that compliance with local zoning ordinances is not excused." *City of Waukegan*, 339 Ill. App. 3d at 372. *Accord State of Illinois Med. Ctr. Comm'n v. Peter Carlton at Ogden & Oakley, Inc.*, 169 Ill. App. 3d 769, 777 (1988) (stating that "legislatively created special districts need comply with municipal zoning ordinances only to the extent that such ordinances do not interfere with the districts' statutory purposes").

30. *Carpentersville*, 135 Ill. 2d. at 476.

31. *See Viacom Int'l, Inc.*, 632 F. Supp. 2d 854.

32. *Id.* at 859–60.

33. *Id.* at 862.

34. *Id.*

35. *Id.* (quoting *Cnty. of Cook v. John Sexton Contractors*, 75 Ill. 2d at 514–15).

36. *Id.* at 864.

37. *Fox Waterway Agency*, 326 Ill. App. 3d at 105.

38. *Id.* at 101.

39. *Id.* at 101–02.

40. *Id.* at 102.

41. *Id.* at 107.

42. *Id.* at 105.

43. *Id.* at 107–08.

44. *Id.* at 108.

> "[W]here a particular local *zoning ordinance* (as opposed to the legislature's Zoning Act) purportedly interfered with the legislative purpose of establishing a statewide environmental program, this court has held that the IEPA *preempted* the ordinance and rendered the ordinance unenforceable against a facility which had acquired a permit pursuant to the IEPA."

*Id.* (quoting *Lily Lake Rd. Defenders v. Cnty. of McHenry*, 156 Ill. 2d 1, 12 (1993)).

45. *Commonwealth Edison Co.*, 288 Ill. App. 3d at 375.

46. *Id.*

47. *Id.* at 376–77.

48. *Id.* at 379.

49. *Id.* at 380.

50. *Id.* at 379, 380.

51. *See Affordable Recovering Hous.*, 2014 U.S. Dist. LEXIS 161106.

52. *Id.* at *1.

53. *Id.*

54. *Id.* at *2.

55. *Id.*

56. *Id.*

57. *Id.* at *3.

58. *Id.* at *7–8.

59. *Id.* at *8 (quoting *Hawthorne v. Vill. of Olympia Fields*, 204 Ill. 2d 243, 261 (2003)).

60. *Id.* at *16.

61. *Id.* at *18.

62. *Id.* at *19.

63. *Reg'l Transp. Auth.*, 202 Ill. App. 3d 265.

64. *Id.* at 267.

65. *Id.* at 268.

66. *Id.* at 270.

67. *Id.* at 272.

68. *Id.* at 274.

69. *Id.* at 273 (quoting *Metro. Sanitary Dist. of Greater Chicago v. City of Des Plaines*, 63 Ill. 2d 256, 261 (1976) (*Des Plaines III*)). In its holding on this issue, the *Evanston* court applied the *Des Plaines III* reasoning. *See City of Evanston*, 202 Ill.App.3d 274.

70. *Gurba*, 385 18 N.E.3d 152.

71. *Id.*

72. *Id.*

73. *Id.*

74. *Id.* The plaintiffs in the case were landowners adjacent to the site of the bleachers who sought to privately enforce the ordinances. *Id.* at 151–52.

7. *Id.* at 152.

76. *Id.* at 162. "After analyzing the plain language of the various constitutional provisions relating to school districts, public education, and home-rule units, we conclude that there is clear support for the trial court's determination that the Board was subject to the City's zoning ordinances." *Id.* at 157.

77. *Id.* at 155.

78. *Id.* (citations omitted). In reaching its conclusion in favor of the City of Crystal Lake, the court did examine additional factors. For example, the court turned to the Zoning Change Provision, located at 105 ILCS 5/10-22.13 which "empowers a local school board '[t]o seek zoning changes, variations, or special uses for *property held or controlled by the school district*.'" *Id.* at 163 (quoting 105 ILCS 5/10-22.13a (West 2012)).The court also looked to the weight of the interests involved to determine whether the interest was one of statewide or local concern. *Gurba*, 385 18 N.E.3d 170. In so doing, they applied the traditional three-prong analysis: (1) existing precedent, (2) the "traditional state and local governments' interests," and (3) statutory language. *Id.* at 170–71 As the Board failed to present a case directly on point, the court determined that while the first prong did not strongly favor Crystal Lake, it also did not favor the Board. *Id.* at 170–71. On the second prong, the court determined that, because the State ceded land-use decisions to local municipalities *and* because the School Code contains no provisions dealing with land use, the local interest outweighed the statewide interest. *Id.* at 171. Finally, the court noted that the third prong (statutory language) also favored Crystal Lake, largely because of the text of the Zoning Change Provision. *Id.* In sum, the court concluded under these factors that the Board would be subject to the local ordinance. *Id.*

79. *Id.* at 174 (distinguishing *Metro. Sanitary Dist. of Greater Chicago v. City of Des Plaines*, 63 Ill. 2d 256 (1976) and rejecting the Board's argument that "a local government unit cannot impede a regional governmental entity in the performance of its duties by trying to make the regional entity conform to local regulations").

80. *Id.*

81. S.B. 0036, 99th Gen. Assemb. (Ill. 2015 Sess.); *Bill Status of SB0036*, Ill. Gen. Assembly, <http://www.ilga.gov/legislation/BillStatus.asp?DocNum=36&GAID=13&DocTypeID=SB&LegId=83396&SessionID=88&GA=99> (last visited May 4, 2015) [hereinafter *Bill Status*]. Should Senate Bill 0036 pass, Illinois School Code Section 10-22.13a would read as follows:

> Sec. 10-22.13a. Zoning changes, variations, and special uses for school district property; zoning compliance. To seek zoning changes, variations, for special uses for property held or controlled by the school district.
>
> A School district is subject to and its school board must comply with any valid local government zoning ordinance or resolution that applies where the pertinent part of the school district is located. The changes to this Section made by this amendatory Act of the 99th General Assembly are declarative of existing law and do not change the substantive operation of this Section.

*Id.* The *Gurba* court cited this section as the only provision in the Illinois School Code to specifically refer to zoning. *Gurba*, 18 N.E.3d 160. It is perhaps worth noting here that Senate Bill 0036 is not the first iteration of such proposed change to the School Code. Indeed, the Board of Education in the *Gurba* case pointed to the proposed change that existed in the 98th General Assembly's Senate Bill 2647 as support for their position. *See id.* at 167–68. The changes proposed in Senate Bill 2647 are virtually identical to Senate Bill 0036. *See* S.B. 2647, 98th Gen. Assemb. (Ill. 2013 Sess.).

82. *Bill Status*, *supra* note 81. The bill was referred to the Rules Committee on April 14, 2015, but no further action has been recorded. *Id.*