

WOODFORD COUNTY ZONING BOARD OF APPEALS

In Re: Applications of Panther Grove Wind)
)
)
)
)

Zoning Case Nos. 20-11-S, and
2020-24-V–2020-40-V

Memorandum of Law Regarding Evidence of Tax Revenue

Panther Grove Wind Energy is the Applicant for Special Use and Variance Requests before the Woodford County Zoning Board of Appeals (“ZBA”). The Applicant filed its applications in October 2020. The hearings related to said applications began on November 16, 2020, and reconvened on November 19, 2020, and December 1, 2020. More hearings are scheduled to occur. The Applicant seeks Special Use Permits for 86 wind turbines and 16 variances from Woodford County’s Tall Structures Ordinance.

During the course of the required public hearings on the Special Use and Variance Requests, Zoning Board of Appeals member Jerry Lay has made declarations of law which are patently incorrect. Due to the nature of the issue at hand and the urgency, the Applicant is compelled to proffer to the Board its position as to the inclusion of evidence related to tax revenue.

The law is well settled. Revenue collection via taxes is a legitimate concern of land use regulation and decisions. Zoning decisions, such as the ones before this ZBA, are viewed by reviewing courts via the so-called “*LaSalle and Sinclair*” factors. *LaSalle National Bank v. County of Cook*, 12 Ill. 2d 40 (1957); *Sinclair Pipe Line Co. v. Village of Richton Park*, 19 Ill. 2d 370 (1960); *City of Chicago Heights v. Living Word Outreach Full Gospel Church and Ministries, Inc.*, 196 Ill. 2d

1, 15 (2002).¹ Among the factors to be considered are the relative gain to the public and the general welfare of the public. Of course public gain and general welfare include tax revenues. See *LaSalle Nat'l Bank*, 12 Ill. 2d at 46-47.

Even the Woodford County Zoning Code mandates that the considerations include "public health, safety, and welfare." See Woodford County Zoning Code, Section 154.24.4. While undefined by the code, tax revenue clearly falls into the category of "welfare" (i.e., financial health of the community), if not also health and safety by its indirect association. "Welfare," as defined by Merriam-Webster's Dictionary includes, among others: "(1) the state of doing well especially in respect to good fortune, happiness, well-being, or prosperity, (2)(a) aid in the form of money or necessities for those in need, (2)(b) an agency or program through which such aid is distributed." See <https://www.merriam-webster.com/dictionary/welfare>.

However, the case law goes further, and expressly articulates approval of tax considerations or revenue collection as legitimate interests in land use decisions. In *River of Life Kingdom Ministries v. Village of Hazel Crest*, 611 F.3d 367 (7th Cir. 2010), the Religious Land Use and Institutionalized Persons Act, provides that the government cannot impose or implement land

¹ The *LaSalle* factors that may be considered when determining validity of a zoning decision are: (1) The existing uses and zoning of nearby property, (2) the extent to which property values are diminished by the particular zoning restrictions, (3) the extent to which the destruction of property values of plaintiff promotes the health, safety, morals or general welfare of the public, (4) the relative gain to the public as compared to the hardship imposed upon the individual property owner, (5) the suitability of the subject property for the zoned purposes, and (6) the length of time the property has been vacant as zoned considered in the context of land development in the area in the vicinity of the subject property. *LaSalle*, 12 Ill. 2d at 46-47. Two other factors have been added to this list: (7) the need and demand for the use; and (8) The extent to which the use conforms to the municipality's comprehensive planning. *Sinclair Pipe Line Co. v. Village of Richton Park*, 19 Ill. 2d 370, 378 (1960); *Hoffman v. City of Waukegan*, 51 Ill. App. 2d 241 (2d Dist. 1964). No single factor is controlling. *Family Christian Fellowship v. County of Winnebago*, 151 Ill. App. 3d 616, 619 (2d Dist. 1986) (citing *LaSalle*, 12 Ill. 2d at 47-48).

use regulation in a manner that treats a religious assembly or institution on less than equal terms with a nonreligious assembly or institution. The River of Life Kingdom Ministries desired to move into a commercial district within the Village of Hazel Crest. However, the zoning ordinance excluded new noncommercial uses from the district, which included churches, community centers, schools, and art galleries. The church was not allowed to relocate there and after being refused the request to move, filed suit in federal court.

In reviewing the District Court's decision, the Court of Appeals for the Seventh Circuit noted that parking space and traffic control are not the only concerns of land-use—commerce and industry are necessary and desirable elements of a community. Specifically, tax revenue is a legitimate concern of land use regulation. *River of Life*, 611 F.3d at 373. The Village was setting aside land for commercial uses which, among other things, generated tax revenue. In so doing, it excluded churches, community centers, meeting halls and libraries because they "do not generate significant taxable revenue." *Id.* Ultimately, the considerations of the Village of Hazel Crest (including tax revenue generation) were found to be legitimate reasons for its land-use decision, and overriding those concerns found in the Act.

Similarly, in *Christian Assembly Rios De Agua Viva v. City of Burbank*, 408 Ill. App. 3d 764 (1st Dist. 2011), a church sought a declaration that it could operate a church upon a certain parcel in a commercial district. Non-revenue producing organizations were prohibited within the district absent special use permit.

The church presumed the city ordinance was invalid (as it prohibited religious entities absent a special use) and proceeded at its own risk to enter into a contract and expended funds to purchase a piece of property within the commercial district. The zoning ordinance included 114

uses in a commercial district and many were business and retail stores. However, churches, as well as other nonrevenue producing organizations, were prohibited in a certain commercial district and only allowed under special uses. Under the zoning ordinance, special uses may or may not be appropriate, depending on a weighing in each case of the public need and benefit against the local impact and effect. Due to the fact the zoning ordinance excluded churches, as well as other secular assemblies including labor and political associations if they do not produce a taxable income, the ordinance did not demonstrate a discrimination based on race, color or national origin.

As the Appellate Court noted: “[o]n December 7, 2010, the city’s zoning, planning and development commission heard the church’s special use permit application. Following the public hearing, the commission recommended against granting a special use permit to the church because of the lack of tax revenue the proposed use would generate.” *Christian Assembly*, 408 Ill. App. 3d at 767. In referring to the *River of Life* (above), the Court stated that “taxable income . . . has been deemed to be a legitimate goal of a zoning ordinance.” *Id.* at 774.

In *Oak Park Trust and Savings Bank*, the Village of Palos Park rejected a development plan to construct multi-family family housing units. *Oak Park Trust and Savings Bank v. Village of Palos Park*, 106 Ill. App. 3d 394 (1st Dist. 1982). The plan commission vote was tied on the application, but the Village thereafter rejected it. The plaintiff then appealed the decision. The court upheld the trial court’s decision finding it was not against the manifest weight of the evidence, and particularly recognized the legitimacy of tax revenue as a factor in plan decisions.

A city planning and zoning consultant testified in *Oak Park Trust and Savings Bank* that the plan was the highest and best use of the property. Although he made no study of Village

expenditures for the proposed development, the consultant testified that the plan would have a positive impact on the Village, would generate tax revenues of \$276,000 a year, and would yield a net increase in the tax base for each school child. *Oak Park Trust and Savings Bank*, 106 Ill. App. 3d at 397. The court noted that even though the plaintiff's consultant and the Village's planner disagreed on the amounts, they both agreed that the proposed development would increase the surplus tax revenues over expenditures and increase the available tax base per student and as such would have a favorable tax impact. *Id.* at 403.

In *International Church*, a church applied for a special use permit to locate in an old supermarket located in a commercial district. *International Church of the Foursquare Gospel v. City of Chicago Heights*, No. 96 C 41831996 U.S. Dist. LEXIS 11125 (N.D. Ill. Aug. 2, 1996). The court held that the City of Chicago Heights was struggling financially and that the commercial corridor with the supermarket was its primary source of tax revenue. The proposed church, a nonprofit, would negatively impact the desperately needed tax revenue available to the city. "The tax revenue generated by this commercial corridor is badly needed by the City in order to continue to provide adequate police fire, and other community services to its citizenry, and to reduce its outstanding debt." *Int'l Church*, 1996 U.S. Dist. LEXIS 11125 at *14.

"There is a broad public interest in maintaining a sound tax system." *Id.* at *22. The court concluded that "[t]he balance between the private interest in religious freedom and the governmental interest of tax collection and maintenance of a functioning tax system must be struck in favor of the governmental interest." *Id.* at *23.

Accordingly, tax revenues generated by a development are necessarily relevant to the ZBA's considerations. The ZBA can and should consider this evidence.

PANTHER GROVE WIND ENERGY
TRIGLOBAL ENERGY

By: Andrew J. Keyt
Heyl, Royster, Voelker & Allen PC
Andrew J. Keyt, ARDC #6277778
John P. Heil, Jr., ARDC #6237286

Heyl, Royster, Voelker & Allen
P.O. Box 6199
300 Hamilton Blvd.
Peoria, IL 61601-6199
Telephone: 309-676-0400
E-MAIL: akeyt@heyloyster.com
E-MAIL: jheil@heyloyster.com
SECONDARY E-MAIL: dnuske@heyloyster.com
38783294_1