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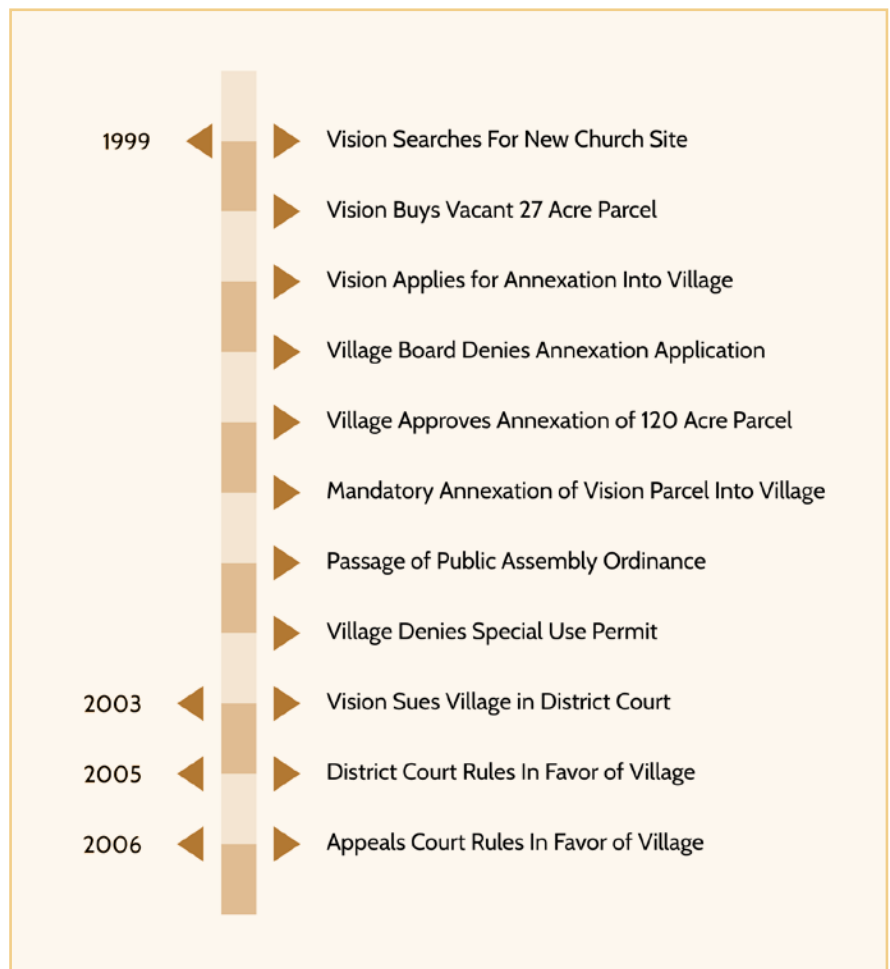
Vision Church v. Village of Long Grove

Zoning and land use regulations have a great impact on the property rights of land owners in the United States. A recent case from the U.S. Court of Appeals for the Seventh Circuit, *Vision Church v. Village of Long Grove*, deals with a dispute over zoning regulations that impacted development of a 27-acre parcel in Illinois. It contains some important principles and warnings regarding zoning and a municipality's ability to annex land.

Background and Time Line

1999 Vision United Methodist Church (hereafter called Vision) begins looking for a site on which to build a new church.

September 2000–2003 Vision purchases a vacant 27-acre parcel in Lake County, adjacent to the Village of Long Grove (hereafter called Village). Shortly afterwards, Vision applies for annexation into the Village, submitting plans for the facility it wants to construct, and for a special use permit. Vision follows with a second submittal of plans for the church, but refuses to comply with some of the limitations the Village wishes to impose on the parcel development as part of the special use permit process. The Village Board, on recommendation of the planning commission, denies Vision's annexation application. The Village approves the annexation of a 120-acre parcel adjacent to the Vision parcel. Land on all sides of the Vision property is now within the Village's corporate boundaries. Soon after this annexation, the Village passes an ordinance that annexes Vision's 27-acre parcel. The Village board enacts a public assembly ordinance which



restricts the size and capacity of buildings used for public assembly. It also includes restrictions on facility parking, building setbacks from the road, and traffic flow.

Vision applies for a special use permit with the Village for its church facility, using its original site plans. The Village board denies this application for a special use permit.

August 2003 Vision files suit in District Court challenging the denial of Vision's application for annexation, its involuntary annexation of Vision's 27-acre parcel, the passage of the public assembly ordinance, and the denial of Vision's application for special use permits. Legal questions are raised by Vision's complaint: Did the Village violate the Religious Land

Use and Institutionalized Persons Act (RLUIPA) protection of the free exercise of religion, which prohibits land use regulations that impose a substantial burden on religious exercise? Did the Village infringe on Vision's first amendment right to the free exercise of religion? Did the Village violate the "equal protection" provision of the 14th Amendment of the United States Constitution and the "equal terms" clause of the RLUIPA?

Vision points to the following facts as evidence of the Village's violation of religious protection by its actions related to the 27-acre parcel it owned:

1) The village allowed other land uses, but had no zone in which churches were allowed without a special use permit. 2) The restrictions imposed by the Village on Vision were not imposed on the six existing churches in the Village.

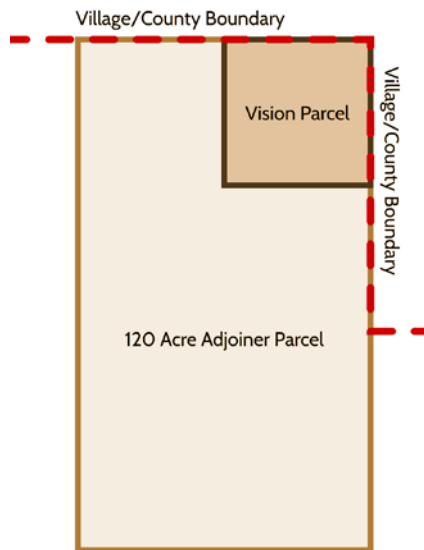
3) The Village imposed more restrictive conditions on Vision than it did on a school to the north of the Vision parcel.

October 2005 The District Court rules in favor of the Village, reaching three important conclusions. First, that the public assembly ordinance is "secular in nature because it merely controls development, and not Vision's religious activities." It applies to all public assembly facilities, both religious and nonreligious, and did not single out one religious group. Second,

that other land uses were only allowed in the business district of the Village, not in the residential district in which Vision wished to build. Third, that Vision was treated the same as any other developer seeking to build a public assembly facility of the same size and on a parcel of land in the same size and location of the Vision parcel. The District Court rejected the claim that Vision had a vested development right to build a church on the 27-acre parcel that it owned. The vested right claim made by Vision was based on Lake County zoning ordinance. Any compensation for violation of a vested development right must be directed at the County, not the Village. Vision appeals the decision to the Seventh Circuit Court of Appeals.

May 2006 The case is argued before the Appeals Court.

November 2006 A decision is given by the Appeals Court. In general, the Appeals Court agrees with the District Court conclusions. However, it adds



these additional points: 1) The Village special permit application restrictions did not totally exclude religious activities. Vision and other new churches in the Village can operate reasonably and without hardship within the size and capacity restrictions set by the Village. Had Vision complied with the Village's requirements, there would likely be a church complex on Vision's parcel today. The Appeals Court could not "fathom a situation in which limiting the church to a three building, 55,000 square feet facility would impose an unreasonable and substantial burden of religious exercise". 2) The zoning regulations of the Village apply not just to churches, but also to those property uses that "may give rise to unique problems with respect to their impact on neighboring property or public facilities." A reasonable person would understand the public assembly ordinance and special use permit requirements of the Village to be a limitation on development in general, and not a limitation on religion specifically. The Village sought to control the future development of Vision's property, but did not want this control because Vision was a religious institution or a religious institution of a certain denomination. The special uses in residential districts raise unique concerns such as traffic control, noise pollution, and their greater impact in the landscape than more common uses. 3) Vision contends that it was treated less favorably than a school just across the road from Vision's property because the school's special use permit was approved, while Vision's was denied. However, the Appeals Court

pointed out that "public schools serve unique public function. . . . It certainly was not irrational for the Village to want the school district's land within its municipal boundaries for the purpose of serving its students". In addition, "conditions imposed on Vision, including a limitation on future development, were placed on the school district."

4) Although Illinois courts have found that, when a plaintiff purchases and invests in a property in good faith that it will receive a building permit, the City can't change the zoning classification of the property to the builder's detriment, making unavailable the intended use of the land. However, the same courts have generally concluded that there is no vested right in the continuation of a zoning classification. In addition, there is no Illinois case law applying the vested rights doctrine where a plaintiff has relied to its detriment on a county zoning ordinance but sued a different government agency. Because it was reluctant to assert its authority over the state courts, it concluded that Vision had no vested development rights.

In conclusion, the Appeals Court determined the Village had not violated the RLUIPA, First Amendment rights, or Fourteenth Amendment rights by its action. It upheld the decision of the District Court.

Lessons and Principles

When it comes to annexation, land planning zones, land development in small communities, and vested land development rights, there are several valuable lessons for land surveyors involved in helping clients develop their parcels or involved in the regulation of land development.

Annexation

Any surveyor involved in a consultant team helping a client manage a land development project should consider the impacts of annexation. The closer the parcel being developed is to a municipal boundary, the more important this consideration becomes. Annexation can dramatically change the set of land development rules your client may have to deal with. It would be wise to talk to nearby municipalities to find out about any annexation plans and the impact it would have on your client's project. A parcel being developed by your client can be annexed without your client's consent in the midst of the development

LESSONS ON ANNEXATION



- 1 Consider the impacts of annexation.
- 2 Annexation can change land development rules.
- 3 Mandatory annexation can occur if requirements met.

process if the legal requirements of the involuntary annexation are met. Involuntary annexation then provides the municipality with authority over your client's land development project that it did not hold prior to the annexation. In essence, the rules can change for your client in the middle of the land development game.

Land Planning Zones

After the involuntary annexation, Vision was unable to develop and use its 27-acre parcel as it had planned when the parcel was outside the City boundary. This case offers a powerful illustration of how difficult it can be to successfully challenge a land planning regulation in the court system. In this case Vision needed to prove that it had been singled out by the land zoning regulation and that this regulation was a substantial and unreasonable burden on its use of the property. The Appeals Court concluded it had done neither in presenting its case. When determining if a land planning regulation is worth challenging, it is good to ask if the regulation in question is reasonable and fairly applied. (A reasonable regulation doesn't necessarily mean reasonable to your client, but reasonable to a court.)

Small Communities

Land development projects in small communities can quickly fall victim to local politics and local attitudes about land development, even for less controversial land uses like a church complex. Although the District Court found no significance in the forced annexation of Vision's parcel

and the passage of the public assembly ordinance shortly afterwards, the Appeals Court clearly smelled something fishy going on. Most reasonable people will conclude that the Village was clearly taking actions meant to stop the development of the church facility that Vision planned. However, the Village ultimately prevailed because of the way those actions were executed and the Court's reluctance to exert its authority over that of the municipality. This is a strong warning to land developers that small communities can easily use land regulation processes that will be upheld in court to target and kill your client's land development project, even if this targeting of a specific project is not in itself ethical or legal. It is especially important to sniff out the real feelings of a local agency about a potential land development project very early in the process, before a lot of the client's money has been put at risk.

Vested Development Rights

In its decision, the Appeals Court appeared sympathetic to Vision's claim of a vested development right. In fact, had Vision sued Lake County instead of the Village, the court may have ruled that Vision was owed some compensation because a vested development right had been violated. However, the court indicated any claim Vision may have had for a vested development right lay with the County, and not the Village. The concept of vested development rights is an interesting one we will have to explore further in future articles for this column. *A*