

5. The Walnut Glen Subdivision, including the subject property, was then rezoned to R-3 which is a residential zoning classification under the Village of Island Lake's Zoning Ordinance.

6. Pursuant to the Annexation Agreement between the owner of the Walnut Glen Subdivision and the Village of Island Lake, the subject property is to be donated to the Village of Island Lake for a public elevated water tower.

7. The Village of Island Lake recently announced at a public meeting that it was proceeding with its plans for the subject property which include construction of a public water tower, public water filtration plant, public pumping station and possible outdoor storage of road salt and other materials for its public works department (the "proposed uses").

8. When the Complaint in the case at bar was filed, the proposed uses for the subject property were not permitted uses under the R-3 zoning district.

9. When the Complaint in the case at bar was filed, the proposed uses were special uses and only permitted if the owner obtained a special use permit from the Village of Island Lake pursuant to section 9-8-2 of the Village of Island Lake's Zoning Ordinance.

10. The Village of Island Lake did not obtain a special use permit for the subject property to allow construction of the proposed public water tower, public water filtration plant, public pumping station and/or possible outdoor storage of road salt and other materials for its public works department.

11. Therefore, the plaintiff filed a Complaint pursuant to 65 ILCS 11-13-15 to prevent the defendant from violating the zoning ordinance by constructing the proposed uses on the subject property.

12. After the Complaint was filed, the defendant passed an amendment to the zoning ordinance concerning village uses, buildings, structures and facilities. (A copy of the ordinance is attached hereto as Exhibit "A")

13. Prior to the passage of the subject ordinance on or about February 12, 2008, the proposed uses were not allowed as a matter of right in any zoning district.

14. Prior to the passage of the subject ordinance, the proposed uses were considered a special use and required a special use permit following a public hearing and recommendations of the Zoning Board of Appeals.

15. The Zoning Board of Appeals and/or the Village Board has the authority to place conditions on the construction, location and operation of any special use to reduce injury to the value of property in the neighborhood.

16. The subject amendment to the zoning ordinance purports to allow all Village uses, buildings, structures and facilities in all zoning districts and exempts all Village uses, buildings, structures and facilities from all applicable regulations of the zoning ordinance including all height limitations, setbacks, bulk, parking and loading, landscaping and other regulations. (See Exhibit "A")

17. In essence, the subject amendment to the zoning ordinance renders the zoning ordinance inapplicable to the defendant.

18. The subject amendment to the zoning ordinance is unconstitutionally arbitrary and capricious because it bears no reasonable relation to the public health, safety and welfare since it allows all Village uses, buildings, structures and facilities in any zoning district with no regulations or restrictions to protect nearby property.

19. In addition, the subject amendment to the zoning ordinance is unconstitutionally arbitrary and capricious for one or more of the following reasons:

A. It allows uses which are not consistent with the defendant's Comprehensive Plan:

B. It allows uses, buildings or structures with no consideration to nearby uses and zoning of property;

C. It allows uses, buildings or structures with no consideration to potential diminishment of property values of nearby properties;

D. It does not promote health, safety, morals or general welfare to allow the Village to construct uses, buildings or structures with no restrictions or regulations to protect nearby property;

E. There is no gain to the public to allow the Village to construct uses, buildings or structures with no restrictions or regulations; and

F. It allows uses, buildings or structures with no consideration of the suitability of the property for that use, building or structure;

20. Also, the subject amendment to the zoning ordinance is unconstitutionally arbitrary and capricious in that it was adopted solely to defeat the plaintiff's cause of action in the case at bar instead of some legitimate municipal purpose.

21. Furthermore, the subject amendment to the zoning ordinance is unconstitutional in that it violates due process because it allows the defendant to construct uses, buildings, structures or facilities such as the proposed uses that had previously been considered special uses without going through the special use process.

22. Thus, the subject amendment to the zoning ordinance prevents the public from commenting on any Village use, building, structure or facility at a public hearing and prevents the Zoning Board of Appeals and/or the Village Board from placing any conditions on the use, building, structure or facility.

23. In addition, the subject amendment to the zoning is unconstitutional in that it violates equal protection because the regulations of the zoning ordinance do not apply to any Village use, building, structure or facility but the zoning regulations do apply to all other similar uses, buildings, structures or facilities.

24. There is no reasonable justification for the zoning ordinance to apply to private parties but not apply to the Village.

25. Therefore, the subject amendment to the zoning ordinance is unconstitutional in that it is arbitrary and capricious, violates due process and/or violates equal protection.

26. The Village is using the subject amendment to the zoning ordinance to construct the proposed uses on the subject property.

27. Since the plaintiff's property is adjacent to the subject property, its use and enjoyment of its property will be substantially affected by the construction of the proposed uses and thus, the plaintiff has standing to bring this action.

28. An actual controversy exists between the parties as to the validity of the subject amendment to the zoning ordinance.

WHEREFORE, the plaintiff prays that this Court enter judgment in its favor and against the defendant and declare that the subject amendment to the zoning ordinance is unconstitutional and invalid and for any other relief that this Court deems just and equitable.

## COUNT II - INJUNCTIVE RELIEF

1. The plaintiff is the owner of property located on the east side of Dowell Road in unincorporated Lake County commonly known as 30353 Dowell Road, McHenry, Illinois.
2. Outlot K of Walnut Glen Subdivision, Phase II in Island Lake, Illinois is located on the west side of Dowell Road immediately across from the plaintiff' property (the"subject property").
3. Upon information and belief, the subject property is owned by Fidler Family Limited Partnership.
4. The property known as the Walnut Glen Subdivision, including the subject property, was annexed into the Village of Island Lake.
5. The Walnut Glen Subdivision, including the subject property, was then rezoned to R-3 which is a residential zoning classification under the Village of Island Lake's Zoning Ordinance.
6. Pursuant to the Annexation Agreement between the owner of the Walnut Glen Subdivision and the Village of Island Lake, the subject property is to be donated to the Village of Island Lake for a public elevated water tower.
7. The Village of Island Lake recently announced at a public meeting that it was proceedings with its plans for the subject property which include construction of a public water tower, public water filtration plant, public pumping station and possible outdoor storage of road salt and other materials for its public works department (the "proposed uses").
8. The proposed uses for the subject property are not permitted uses under the R-3 zoning district.

9. The proposed uses are special uses and only permitted if the owner obtains a special use permit from the Village of Island Lake pursuant to section 9-8-2 of the Village of Island Lake's Zoning Ordinance.

10. The Village of Island Lake did not obtain a special use permit for the subject property to allow construction of the proposed public water tower, public water filtration plant, public pumping station and/or possible outdoor storage of road salt and other materials for its public works department.

11. Thus, the construction of a public water tower, public water filtration plant, public pumping station and/or outdoor storage of road salt and other materials for its public works department would violate the Village of Island's Zoning Ordinance.

12. The plaintiff's property is adjacent to the subject property.

13. The plaintiff's use and enjoyment of their property will be substantially affected by the above referenced violation of the Zoning Ordinance.

14. The plaintiff has no adequate remedy at law.

15. The plaintiffs have the right to bring an action to prevent the unlawful construction of a public water tower, public water filtration plant, public pumping station and/or possible outdoor storage of road salt and other materials for the public works department in violation of the Zoning Ordinance on the subject property pursuant to 65 ILCS 5/11-13-15.

16. A copy of the Complaint was served upon the Mayor of the Village of Island Lake who is the chief executive officer of that municipality.

17. The plaintiff is entitled to payment of its reasonable attorney fees pursuant to 65 ILCS 5/11-13-15.

WHEREFORE, the plaintiff prays that this Court:

A. find that the defendant, VILLAGE OF ISLAND LAKE's, proposed uses for the subject property violate the Zoning Ordinance of the Village of Island Lake;

B. enter a permanent injunction against the defendant, VILLAGE OF ISLAND LAKE, prohibiting it from constructing a public water tower, public water filtration plant, public pumping station and/or possible outdoor storage of road salt and other materials for its public works department on the subject property;

C. order the defendant, VILLAGE OF ISLAND LAKE to pay the plaintiff's reasonable attorney fees and costs; and

D. for any other relief that this Court deems just and equitable.

By

  
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