

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, COUNTY DIVISION**

**IN THE MATTER OF THE APPLICATION)
OF THE PARK DISTRICT OF LA GRANGE,)
A BODY POLITIC AND CORPORATE)
ORGANIZED AND EXISTING UNDER THE) Case Number: 09 CH 09421
LAWS OF THE STATED OF ILLINOIS, TO)
SELL A PARCEL OF LAND LESS THAN)
THREE ACRES IN ARES)**

**POST-TRIAL MOTION TO VACATE JUDGMENT
PURSUANT TO ILLINOIS CODE OF CIVIL PROCEDURE SECTION 5/2-1203**

Now comes the La Grange Friends of the Parks, by and through its attorneys, Joan Johnson, Mark E. Wohlberg, and Thomas Paul Beyer, and pursuant to Illinois Code of Civil Procedure Section 5/2-1203 moves this Court for an Order vacating the judgment entered on October 8, 2010 and entering judgement denying the Park District of La Grange’s Application in its entirety for the following reasons:

1. This Court has erred in its determination that the amount of land at issue in this matter is three acres or less. The land at issue in this matter is more than 3 acres and accordingly this Court lacks subject matter jurisdiction under the Park Commissioners Land Sales Act, 70 ILCS 1235/1 et seq.
2. This Court has erred in its determination that under Park Commissioners Land Sales Act, 70 ILCS 1235/1 et seq. the standard of proof to be applied is the Arbitrary and Capricious Standard, and that this Court would defer to the Park District’s determination of what is in the public interest if it met its minimum burden of proof under the Arbitrary and Capricious Standard. Rather under the Act the Park District does not have the authority to sell the property so this Court cannot be in the position of determining whether or not their decision to do so is Arbitrary and Capricious.
3. This Court has erred in its determination that the statute upon which the Park District

bases its action, the Park Commissioners Land Sales Act, 70 ILCS 1235/1 et seq. is constitutional. Rather it is clearly an unconstitutional delegation of authority to the courts in that it requires courts to determine what is in the public interest in violation of the separation of powers clause of the Illinois Constitution.

4. This Court erred in allowing the Park District to put on evidence of what it would do with the proceeds from the sale of the property which was both irrelevant and prejudicial.
5. This Court erred in its findings on the evidence presented that the Park District had met its burden of proof. That is, that its decision to sell the land (which it does not have the authority to make) was not arbitrary and capricious, as the evidence overwhelmingly established that the reasons presented by the Park District that the land in question should be sold were not reality based and there is no connection between the harm which the Park District claims exist and the remedy proposed by the Park District of selling the land.

ARGUMENT

I.

THE ARBITRARY AND CAPRICIOUS STANDARD DOES NOT APPLY TO THIS CASE Park Districts Do Not have Inherent Authority

Under the Illinois Constitution a local unit of government can be a home-rule unit or a non-home-rule unit. Counties and municipalities may be home-rule local units of governments. Ill.Const. 1970 art VII §6. Ill. Const. 1970 art. VII, sec. 1. Home rule units of government have broad powers pertaining to the government and affairs of the unit, under the Illinois Constitution, Ill. Const. 1970 art. VII §6.

Non-home-rule units have limited powers under Article VII §7 of the 1970 Illinois Constitution which codifies "Judge Dillon's Rule." Judge Dillon's Rule was applicable to all units of local government in Illinois under the 1870 Constitution. T&S Signs, Inc. v. Village of Wadsworth, 634 NE 2d 306, 261 Ill.App.3d 1080, 1086 (2nd Dist. 1994). Under Dillon's Rule, a

non-home-rule unit may exercise only those powers specifically granted to it by the Constitution or by statute. See Village of Wadsworth, 261 Ill.App.3d at 1085 (holding that the Village, a non-home rule unit, could regulate the size and placement of signs because the Highway Advertising Control Act expressly stated that the Village could enact a more restrictive regulation).

It is well settled that park districts are non-home rule municipal entities, and thus have no inherent powers. Steier v. Batavia Park Dist., 670 N.E.2d 1215, 283 Ill.App.3d 968, 971 (2nd Dist.1996). Instead, a park district has only the powers delegated to it by the legislature. Steier, 670 N.E.2d at 971. Statutes that grant power to a non-home rule entity are construed strictly against the entity that claims the right to exercise the power. Steier, 283 Ill.App.3d at 971 (holding that the Batavia Park District had no authority to enact a statute restricting use of the Batavia-Fox River launch because the Park District Code only gave them authority to license, regulate and control in the harbor, and nothing in the record supported the contention that the launch is a “harbor” within the meaning of the Code). As pointed out in IICLE’s Municipal Law Series, non-home-rule units have been granted authority to license dogs under 65 ILCS 5/11-20-9 but not cats. Municipal Law Series Vol. 1 §1.47 (2009). See also City of Markham v. State and Mun. Teamsters, Chauffeurs and Helpers, Local 726, 701 N.E.2d 153, 299 Ill.App.3d 615 (1st Dist, 1998) (holding that the city lacked the statutory authority to implement a collective bargaining provision.).

It is fundamental that when a municipal ordinance is challenged the municipality must show that the exercise of power is authorized by the General Assembly, and any doubt as to the existence of such power will be resolved against the municipality. La Salle Nat. Bank v. Village of Brookfield, 420 N.E.2d 819, 821 95 Ill.App.3d 765 (1st Dist. 1981). Specifically, where statutes granting powers to municipal corporations are concerned, any fair and reasonable doubt of the existence of a power has always been resolved against the municipality. La Salle Nat. Bank, 420 N.E.2d at 821. In LaSalle, the court reasoned that the Village had exceeded its statutory authority by requiring a cash deposit for completion of improvements, in lieu of a bond,

before a proposed map or plat has been approved. La Salle Nat. Bank, 420 N.E.2d at 822. The Court in LaSalle held that the ordinance requiring the escrowing of funds to cover the costs of installing certain public improvements is beyond the powers conferred upon defendant by the legislature. La Salle Nat. Bank, 420 N.E.2d at 821. See also Thompson v. Village of Newark, 329 Ill. App. 3d 536, 263 Ill.Dec. 775, 768 N.E.2d 856 (2nd Dist. 2002). In Thompson the Court held that the Village could not impose impact fees for the construction of schools when the statute only gave the Village authority to impose impact fees to purchase land for a school site. The Court reasoned that the statute allowed impact fees for “school grounds” and “school grounds” only refers to land on which a school may be constructed, not school buildings or other infrastructure. Thompson, 329 Ill. App. 3d 536 at 540.

If an ordinance is void for want of express statutory authority to enact it, it has no legal existence whatsoever. Two Hundred Nine Lake Shore Drive Bldg. Corp. v. City of Chicago, 278 N.E.2d 216, 3 Ill.App.3d 46, 51 (Ill. App. 1 Dist., 1971). In Two Hundred Nine, the city enacted a Fair Housing Ordinance in 1947 which made it unlawful for real estate agents to engage in discriminatory practices. The City amended that ordinance in 1968 to extend it to owners, managing agents, or other persons, or corporations. Subsequent to the amendatory ordinance, the City of Chicago was declared a home rule unit and had expanded powers which would have given the City the authority to enact the amended ordinance. However, the Court declared that the subsequent enabling legislation could not and did not bring vitality to this otherwise barren attempt of the municipality to regulate a social evil. Two Hundred Nine, Ill.App.3d at 51. The Court in Two Hundred Nine held that the amendatory ordinance was void at its inception because the city lacked the requisite legislative authority to enact the amendatory ordinance at the time it attempted to do so. Two Hundred Nine, Ill.App.3d at 51.

In this litigation, zoning cases have been cited for the proposition that a park district has inherent authority to determine how its property is disposed of. Sweeping zoning authority has

been delegated to municipalities by the Illinois General Assembly. See 65 ILCS 5/11-11-1 through 5/11-15.3.1. Under the Illinois Constitution municipalities include only cities, villages and incorporated Towns. Ill. Const. 1970, art. VII, § 1. Park districts are special districts which the Illinois Constitution excludes from the definition of municipality. Ill. Const. 1970, art. VII, § 1 & 8. Park districts not being municipalities or counties have no zoning power and instead are subject to the zoning ordinances enacted by the municipality or county in which they are situated. Wilmette Park Dist. v. Village of Wilmette, 112 Ill.2d 6. (1986). In the zoning case of Klaeren v. Village of Lisle, 202 Ill.2d. 164 (2002), the Court at page 182 quotes with approval what, from all appearances, is an unequivocal statement of inherent power in a municipal authority to deal with its real property. The Klaeren Court's quote is from LaSalle National Bank v. County of Cook, 12 Ill.2d 40, 46 (1957), which quotes Wechter v. Board of Appeals, 3 Ill.2d 13, 16 (1954), which in turn paraphrases Trust Co. of Chicago v. City of Chicago, 408 Ill. 91 (1951). What the Supreme Court wrote in Trust Co. on this issue, with citations omitted, is as follows.

While cities and villages **have statutory authority for the enactment of zoning ordinances**, nevertheless the governmental power so conferred to interfere by zoning regulations with the general rights of property owners is not unlimited, and such an ordinance, to be valid, must have a real and substantial relation to the public health, safety, morals, or general welfare. (*Citations omitted*) Whether the restraints imposed by a zoning ordinance upon the use of private property do, in fact, bear a real, substantial relation to the public health, safety, comfort or welfare, or whether they are essentially capricious and unreasonable is a question subject to judicial review. (*Citations omitted*) However, it is primarily the province of the municipal body **to which the zoning function is committed** to draw the line of demarcation as to the use and purpose to which property shall be assigned or placed, and it is neither the province nor duty of courts to interfere with the discretion with which such bodies are vested, unless the legislative action of the municipality is shown to be arbitrary, capricious and unrelated to the public morals, safety and general welfare. (*Citations omitted.*)

Trust Co. of Chicago v. City of Chicago, at 98.

When the quote in Klaeren is seen in its context and its historical underpinnings it is seen that it is a statement recognizing that the authority to zone property within a municipality has been granted to the municipalities by statutes enacted by the General Assembly. The statement in Klaeren is only about the General Assembly's grant of statutory zoning authority to municipalities. It is not about inherent authority.

Zoning cases have also been cited in this litigation for the proposition that a court may only review a legislative enactment to determine if it is arbitrary or capricious. Klaeren draws a distinction between what is truly legislative as opposed to quasi judicial, but it does stand for the proposition that if authority has been granted to a governmental subdivision of the state by the General Assembly, and the subdivision enacts an ordinance within the authority that has been granted, the ordinance is a legislative act which may only be reviewed for arbitrary or capriciousness. After an exhaustive search no case could be found where a court has approved a legislative act and then changed it. Rather the general rule is that the legislative act is either valid or void. To change it would be impermissible judicial legislation. Universal Credit Co. V. Antonsen, 374 Ill. 194, 199 (1940) (Courts cannot legislate.); Hood v. Illinois High School Asso., 359 Ill. App.3d 1065; and In Re J.E., 282 Ill. App.3d 794, 801 (1996) (Courts have no authority to engage in judicial legislation.). If a legislative act is reviewed for arbitrary or capriciousness it may only be found to be either valid or invalid.

Statutory Construction

The purpose in construing a statute is to give full effect to the intent of the legislature and to make sure that all parts of a statute are given full effect and not ignored. Gallik v. County of Lake, 781 N.E. 2d 522, 335 Ill. App.3d 325. 269 Ill. Dec. 725 (2nd Dist. 2002). The cardinal rule of statutory interpretation is to ascertain and give effect to the legislative intent, and the best indication of legislative intent is the language used in the statute. Bigelow Group, Inc. v. Rickert, 877 N.E. 2d 1171, 1176 (Ill. App. 2007). A court must give statutory language its plain and

ordinary meaning. Rickert, 877 N.E. 2d at 1176. Under the guise of construction, a court may not supply omissions, remedy defects, annex new provisions, substitute different provisions, add exceptions, limitations, conditions, or otherwise change the law so as to depart from the plain meaning of language employed in the statute. King v. First Capital Financial Services, 828 N.E.2d 1155, 1169, 215 Ill.2d 1, 293 Ill.Dec. 657 (2005) (holding that there exists no private right of action under the Attorney Act for damages. Had the legislature intended to provide a cause of action for damages for violation of the Attorney Act, it could have easily done so).

A court may resort to extrinsic aids, such as legislative history, to determine legislative intent only if the plain language of the statute is ambiguous. Land v. Board of Educ. of City of Chicago, 781 N.E.2d 249, 254 202 Ill.2d 414, 269 Ill.Dec. 452 (2002). Where the language is unambiguous, the statute must be given effect without resorting to other aids of construction. Rickert, 877 N.E. 2d at 1176. The responsibility for the wisdom or justice of legislation rests with the legislature, and courts may not rewrite statutes to make them consistent with the court's idea of orderliness and public policy. People v. Wright, 194 Ill. 2d 1, 740 N.E.2d 755, 251 Ill.Dec. 469 (2000). Statutes granting power to a municipal corporation are construed strictly against the municipality claiming the right to exercise the power. Steier at 971.

In the present case, the statute does not grant any authority to park districts to sell parkland. Instead what the statute plainly states is that a park district may apply to a court for “leave to sell parkland.” 70 ILCS 1235/1. Black’s Law Dictionary defines “Leave of Court” as, “Permission obtained from a court to take some action which, *without such permission would not be allowable.*” Black’s 5th Edition page 801 (Emphasis Added). The Illinois General Assembly could have granted authority to a park district to sell parkland, but it didn’t. Since a park district cannot sell parkland in the first place, its decision to do so is void and it certainly does not come before this Court for a determination of whether it is arbitrary or capricious.

The only reason to hold that it does is for the purpose of finding an approach to the

statute that renders it constitutional. However, as detailed above, a court may not rewrite or write into a statute what simply is not there, even to save it from being declared unconstitutional. The Park District does not have the authority to sell parkland, any resolution purports to do so is void at its inception and so the Arbitrary and Capricious standard cannot apply because there is nothing to review.

II.
THE COURT LACKS SUBJECT MATTER JURISDICTION
BECAUSE THE PROPERTY TO BE TRANSFERRED IS MORE THAN 3 ACRES

What the facts demonstrate is that there is only one transaction under which the Shawmut Parcel and Parcels 2 and 3 are being transferred. The New Contracts require contemporaneous transfers of Parcels 2 and 3 (Exhibit A, §1. (b)(v)) and are contingent upon the irrevocable transfer of the Shawmut Parcel to the Village of La Grange. In turn, under the Transfer Agreement, the transfer of the Shawmut Parcel to the Village of La Grange does not become irrevocable (Exhibit B - Section I) until Parcels 2 & 3 are purchased by the Developer, security is posted, and earthmoving begins. This arrangement is one transaction regardless of how the Park District tries to obscure it.

The Park District has drawn up its documents to make it appear that it made a fee simple transfer of the Shawmut Parcel to the Village. It has not. Unrecorded encumbrances are encumbrances nonetheless. The interest transferred is not fee simple, but a fee conditional: unless future conditions are met the property transfer will be null and void. The fact that the Village and the Park District have not recorded the reverter only serves to show their intent to hide the true nature of the transaction from the Court. This is also seen in the obscure way they refer to ARP (the Developer) in the Transfer Agreement and other documents.

The statute, 70 ILCS 1235/1 et seq., under which the Park District is proceeding in this matter only applies to transfers of property not exceeding three acres. The transaction in this case involves more than three acres: Parcel 2 is .78 acres, Parcel 3 is 2.04 acres, and the

Shawmut Parcel is .69 acres for a total of approximately 3.5 acres. Accordingly, this Court lacks subject matter jurisdiction.

The Park District asserts that the Court should not include the Shawmut Parcel as part of the transaction. However, this flies in the face of common sense. If this Court approves the Park District's application, 3.5 acres will be transferred. If this Court does not approve the Application, no property will be transferred. Transfer of any one of the Parcels is contingent upon the transfer of all, and notably for the benefit of the Developer, ARP, who would not purchase Parcel 2 and 3 unless the Shawmut Parcel is also transferred.

Moreover, Illinois law does not support subterfuge. Our Supreme Court states that it is axiomatic that a party cannot circumvent the requirements of a statute by doing indirectly what cannot be done directly. Petition of Kildeer to Annex Certain Territory, 124 Ill. 2d 533, 547, 530 N.E. 2d 491, 497 (1988) (citing Hopkins v. Powers, 113 Ill.2d 206, 212, 497 N.E.2d 757 (1986)); see also City of Elgin v. County of Cook, 169 Ill.2d 53, 660 N.E. 2d 875 (1995) (prohibiting indirect judicial challenges to siting decisions when direct route would have been prohibited). Clearly, the Park District cannot be allowed to do indirectly (convey 3.5 acres under 70 ILCS 1235/1 et seq.) what it cannot do directly. The Illinois Supreme Court has soundly rejected piecemeal approaches to circumvent statutory limits.

Serious practical difficulties would result if a municipality were allowed to annex less than 10 acres out of a tract greater than 10 acres. For example, a municipality may annex 9 acres out of a tract of 18 acres. In the future, the same municipality may annex the remaining 9 acres. Each ordinance, on its own, would conform to the technical requirements of the statute as interpreted by Kildeer, but the net effect of the two ordinances would violate the express terms of the statute. This piecemeal method of annexation indirectly violates the 10-acres limitation.

Petition of Village of Kildeer, 124 Il.2d at 547, 530 N.E.2d at 497 (1988).

This matter presents an even stronger case. While the Park District has tried to make it appear

that the transfer of the Shawmut Parcel and Parcels 2 and 3 are separate, the facts demonstrate that transfers are inextricably intertwined. None of the property is transferred unless all of the property is transferred. Accordingly, this Court should find that it lacks subject matter jurisdiction under the statute and enter summary judgment in favor of the Objectors.

In addition, when in this case the Park District amended the Application on the eve of trial so that it is now asking for authority to sell the property for any person or entity, not just ARP, the park District nullified its own subterfuge. Since the swap of the Shawmut Parcel will be reversed under the contract between the Village and the Park District if ARP is not the purchaser, then the Court's judgement will have authorized the sale of land in excess of 3 acres. Since the Court has placed no controls on to whom the property may be sold, the Court's order is void for lack of subject matter jurisdiction.

III.

THE PARK COMMISSIONERS LAND SALES ACT IS UNCONSTITUTIONAL

There are two statutes at issue in this case; the resolution enacted by the Park District and the General Assembly's statute, Park Commissioners Land Sales Act, 70 ILCS 1235, under which the proceeding was brought. Statutes are presumed constitutional, and the party challenging the constitutionality of a statute has the burden of establishing its invalidity. People v. Carpenter, 888 N.E.2d 105, 116 228 Ill.2d 250 (2008). The language of a statute is the best indication of the legislature's intent and the statute's purpose. People v. Carpenter, 888 N.E.2d at 116. While courts must interpret an act to preserve its constitutionality if feasible, courts have no power to rewrite it. Brown v. Fire Ins. Co. of Chicago, 265 Ill. App. 393, 409 (1st Dist. 1932). (Questions of policy are for the legislative rather than the judicial branch of government.). A court is not free to rewrite legislation or ignore an express requirement contained in it. Westinghouse Airbrake Co. v. Industrial Commission, 306 Ill. App.3d 853, 856 (3rd Dist. 1999) (because a majority of a panel of three commissioners did not approve the Commission's decision, as required by the Worker's Compensation Act, the Court found that the Commission's decision not

valid.).

Under the separation of powers clause of the Illinois Constitution (Ill.Const.1970 act II §1) the Courts may not exercise executive or legislative power. Borreson v. Dept. of Public Welfare, 368 Ill.425, (1938). (Holding that a statute which provided for de novo determination of whether Old Age Assistance should be granted and in what amount was an invalid delegation of executive authority to the Courts.) Similarly, the exercise of legislative power by a court is not permitted. Universal Credit Co. v. Antonsey, 374 Ill. 194, 199 (1940) (Courts have no authority to legislate.).

In Fields Jeep-Eagle, Inc. v. Chrysler Corp., 163 Ill.2d 462 (1995), the Illinois Supreme Court held that the determination of whether to grant an additional franchise in a particular market was in the public interest is an impermissible delegation of legislative and/or administrative power that violates the separation of powers clause of the Illinois Constitution. Fields at 479. See also West End Savings & Loan Ass'n v. Smith, 16 Ill.2d 523,525, 158 N.E.2d 608 (1959) (Concluding that the determination of the appropriate locations of the savings and loan associations, and the appraisal of factors weighing on those decisions, was "executive in nature" and fell "outside that class to which judicial processes are limited.").

In the present case the Commissioners Land Sales Act, 70 ILCS 1235/1 directs the court to determine what is in the public interest. Under Fields this is an impermissible delegation of authority to the courts and it unconstitutional. This Court has held that the Commissioners Land Sales Act is constitutional. The Court's conclusion depends on the following reasoning. Under the Act, the park district makes the decision to sell the property and the court only reviews that decision to determine whether the decision is arbitrary or capricious. As demonstrated above, that reason is faulty. First, the statute does not grant authority to a park district to sell parkland, it only gives it the opportunity to get permission from the court and second, the statute requires the court not the park district to determine what is in the public interest. In this case, the plain

language of the statute is being ignored. The interpretation that a park district has authority to sell the land under the Act is particularly unsupportable when it is remembered that any grant of authority is to be construed against the park district. The Park Commissioners Land Sales Act is unconstitutional and this court should not countenance a tortured interpretation of it in order to avoid that result.

**IV.
EVIDENCE OF WHAT THE PARK DISTRICT WOULD DO
WITH THE PROCEEDS OF A SALE SHOULD NOT HAVE BEEN ADMITTED**

Evidence of what the Park District may do with the proceeds of a sale was admitted over the objections of the La Grange Friends of the Parks. However, supposed financial benefits do not meet the Public Interest requirement. People Ex Rel. Scott v. Chicago Par District, 66 Ill.2d 65, 80-81 (1976). If the proceeds from a sale of Parkland were the reason to sell it, the more needed the parkland is, the more justification there would be to sell it. In an area where open space is at a premium, such as La Grange, the need for parkland is high, and so is its monetary value. As the population increases, the need for the parkland increases with a corresponding increase in the monetary value of the land. Accordingly, if the proceeds are the reason to sell the Parkland, it would be in the public interest to sell the most needed parkland, as it would provide the most proceeds. This would make it in the public interest to sell Central Park in New York or Grant Park here in Chicago. Additionally, it is the duty of park commissioners to use park district funds to benefit the park system and the public. Accordingly, that the funds from the sale of parkland will be used for a good purpose is presumed. But the funds cannot be the reason for selling the property or it would be in the public interest to sell any parkland. For this reason what the Park District intends to do with the money is irrelevant.

Moreover, the Park District is not in anyway restricted to using the proceeds of the property for their purposes testified to at trial. The Park District could use the funds for any

purpose it decides completely eliminating any connection between the sale of the parkland and any proposed uses asserted by the Park District at trial. All of the Park District's documents and testimony as to what they might or may do with funds from a sale is irrelevant and prejudicial and should not have been allowed into evidence.

V.

**THE PARK DISTRICT FAILED TO PROVE THAT
THE SALE OF THE PARKLAND IS IN THE PUBLIC INTEREST**

Most of the evidence presented by the Park District goes to the issue of what they intend to do with the proceeds resulting from the sale of the parkland. As discussed above, this evidence should not have been admitted and is not relevant to the question of whether or not the parkland should be sold. The La Grange Friends of the Parks' objected to the admission of this evidence strenuously, but since it was admitted over those objections, they presented an expert, Cheryl Cieko, who testified that the ballfields would not be flooding if they were simply properly graded. She also testified that when she was at the property inspecting it, it was raining, water was standing on the infields of the baseball fields, and yet on the grassy areas there were soccer games being played unhampered by flooding. Ms. Cieko also testified that during the four years she was a Park District of La Grange Commissioner there were no complaints of flooding at Gordon Park. But that instead the rental of the Gordon Park fields was the Park District's largest source of non-tax revenue. Surely the overwhelming evidence is that the eastern area of Gordon Park does not have a flooding problem. Once again, whether or not the eastern area of Gordon Park has a flooding problem or what supposed improvements the Park District intends to make to that area of the park, is not relevant to the question of whether or not the parkland at issue in this case should be sold.

On the issue of whether or not the parkland that is at issue in this case should be sold, the Park District provided scant evidence and that which they did provide simply does not lead to the

conclusion that it is in the public interest to sell the property. The Park District made the assertion that the property is awkwardly sloped. The evidence they provided for this was the statement of Dean Bissias that it was more difficult to mow when it was wet. He provided no details on how more difficult it is and does not explain why the Park District could not simply wait until it was dry to mow it. Moreover the assertion that the slope poses a serious problem was refuted by the Park District's own witnesses. Tim Kelpsas testified that police cars were able to drive down the slope and the Park District's own expert testified that the slope on the subject parkland was 7%, and also testified that they intended to build a sledding hill that would have a slope of 20%. The Park District is willing to pay for a hill that has a sloop of 20 % but asserts that it is necessary to sell property with a 7 % sloop because it is too difficult to maintain. What this evidence demonstrates it the conclusion of the park District is completely without merit

The Park District asserts that the property is isolated yet they provided no creditable evidence for this assertion. But more telling is that once again their own witness, Tim Kelpsas, completely refuted this claim when he testified that police cars are able to drive directly onto it.

The Park District asserted that this area has a problem with people drinking and smoking. However, they provided scant evidence on that issue. Only two instances of drinking were testified to and in both cases, there was no evidence that any of the people drinking were underage, only one instance which might have been marijuana smoking was testified to and no arrest records, incident reports, or police records of any kind were offered at trial. Moreover, the Park District did not offer into evidence any complaints of any neighbors and no neighbors in the area reported seeing any problems with drinking or other illegal activity in the park area.

None of the reasons offered by the Park District for why the property should be sold, hold up to close scrutiny. Moreover, they simply are not reasons to sell parkland. There is no logical connection between the possibility that someone has drunk alcohol or used marijuana on

property and the conclusion that the property should be sold or that property which has a slope and may be a little difficult to mow during the rain is not suitable as parkland.

In contrast, the Park District's own witness testified that the land is usable for park purposes. Mr. Robertson testified that soccer was played on the subject property for years and that many other activities and uses were available to all park patrons. Mr. Cushing testified that his own children played soccer on the parkland and that the parkland is useable for many recreational purposes. In fact, most of the Park District's witnesses conceded this point. Moreover, the La Grange Friends of the Parks witnesses, in particular Ed Kram, testified that for many years when he was growing up in La Grange, he and his friends who lived west of La Grange Road used the parkland on a regular basis.

When you strip away what the Park District asserts it will do with the proceeds from the sale which, keep in mind, it is not bound to do, and look at the remaining evidence the Park District has clearly failed to provide any valid reason for selling the parkland.

WHEREFORE, the La Grange Friends of the Parks move this court for an order pursuant to Section 5/2-1203 for an order vacating the judgment entered on October 8, 2010 and denying the Park District of La Grange any relief under its application.

Respectfully Submitted

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