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A Year Later: *Klaeren v. Lisle* and the Troubles it has Wrought

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In the fall of 2002, the Illinois supreme court issued its opinion in *People ex rel. Klaeren v. Village of Lisle*,[1] reversing more than forty years of judicial precedent by holding that "municipal bodies act in administrative or quasi-judicial capacities when those bodies conduct zoning hearings concerning a special use petition."[2] Although concerns promptly were raised about the potential adverse effects of this decision,[3] the past fifteen months have revealed that the difficulties encountered by courts, property owners and developers, and local governments as a result of the *Klaeren* decision may be worse than imagined.

Some of these difficulties were expected. For example, local zoning bodies have seen simple hearings extend *ad nauseum* as interested parties present-and zoning bodies admit-all evidence that *might* be relevant to avoid the risk of having potentially relevant evidence kept from a reviewing court because it was not part of the record before the hearing body. Similarly, we have seen local zoning boards make plainly erroneous evidentiary rulings-such as, in one case, refusing to allow a petitioner to cross-examine the author of a staff report entered into the record by the municipality[4]-that will likely result in orders of remand for further hearing,[5] with attendant delays for property owners trying to obtain a final decision on what can be developed on their property. Likewise, individual members of the local zoning board, as well as neighbors who have testified at a zoning hearing, have found themselves in the unwelcome situation of being named as defendants in litigation that ensued from the denial of a special use permit.

This article, however, is not a recitation of post-*Klaeren* war stories from local zoning hearings. Rather, it focuses on the struggles that courts have had in applying the *Klaeren* decision. In addition, it will re-examine the supreme court's analysis of the legislative zoning scheme to determine whether the court's revolutionary zoning decision inadvertently rewrote the Illinois zoning enabling acts.[6]

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Klaeren's Confused Progeny

For more than a year, the supreme court and several appellate courts have tried to reconstruct Illinois zoning law, but in doing so it appears that *Klaeren* has produced square pegs that do not fit easily into the round holes of precedent and statutory procedures. Although these analytical difficulties may be related to the individual cases themselves, they are more likely evidence of the fundamental flaws in the *Klaeren* decision itself.

Perhaps the best example of the confusion over *Klaeren* is the supreme court's own decision in *Hawthorne v. Village of Olympia Fields*.[7] In *Hawthorne*, the court considered the validity of the Village's prohibition of a "day care home" and its denial of a variance to allow such use. The hearing on the variance clearly involved "the property rights of the interested parties" and "fact-finding . . . to decide disputed facts based on evidence adduced at the hearing";[8] the determination regarding the variance was plainly a "binding determination[ ] . . . directly affect[ing] the legal rights of individuals."[9] Even though the variance in *Hawthorne* featured the same type of process and decision-making as the special use permit in *Klaeren*, the supreme court concluded that the need to enact an ordinance when granting such a variance made the variance process "a legislative act" to which the Administrative Review Law does not apply.[10]

The Court attempted to distinguish the variance in *Hawthorne* from the special use permit in

Klaeren. Specifically, the court asserted that there is "a clear distinction between variances and special uses" in that variances apply "where the desired use is forbidden under the existing zoning ordinances," whereas special uses merely allow "a property owner to use his property in a manner the zoning ordinances already address and allow."[11] This rationale, however, lacks support from the statutory language or from the historic view of special uses.

Under the relevant statutes, variances are only authorized when (i) the applicable zoning regulations provide for such variances, (ii) the granting of specific variances are not prohibited "in whole or in part" in the zoning ordinance, and (iii) the statutory standards for variances are met.[12] Similarly, special use permits need to be identified as such in the local zoning ordinances, and they are "permitted only upon evidence that such use meets the standards established for such classification in the [zoning] ordinances."[13] Moreover, despite the Court's recent venture into special use permits, the longstanding view of courts had been that special uses allow an owner "to use his property in a manner *contrary to* the [zoning] ordinance provided that the intended use is one of those specifically listed in the ordinance and provided that the public convenience will be served by the use."[14] Although variances and special use permits serve different functions and are subject to different standards, both are forms of relief from the generally applicable regulations of a local zoning ordinance and are only authorized to the extent allowed by such local zoning regulations.

The "distinction" between variances and special use permits articulated in *Hawthorne* is even more troublesome in light of the quasi-judicial nature of variances under the relevant statutes. In both the Illinois Municipal Code and the Counties Code, the General Assembly has made clear that variances are quasi-judicial in nature and subject to the Administrative Review Law ("ARL")[15]-at least when the local zoning board makes the final decision on the variance request.[16] The supreme court, however, has stated that when variances are granted by ordinance, they become legislative acts.[17] If a statutorily-recognized quasi-judicial function like the granting of variances is transformed into a legislative act because of "the enactment of an ordinance,"[18] then the granting of special use permits-which can only occur through the enactment of an ordinance according to the relevant statutes-must *a fortiori* be a legislative act. Prior to *Klaeren*, Illinois courts have recognized the statutory differences between the quasi-judicial nature of variances and the legislative nature of special use permits.[19] Without any serious consideration of the provisions in the applicable statutes, however, the supreme court has now turned those analyses on their head.

Despite the Court's recent venture into special use permits, the longstanding view of courts had been that special uses allow an owner "to use his property in a manner *contrary to* the zoning ordinance."

In light of the supreme court's confusion in applying its own ruling in *Klaeren*, the difficulties that appellate courts have encountered are far more understandable. In *Gallik v. County of Lake*,[20] the Appellate Court for the Second District applied *Klaeren* to a county's denial of a special use permit. In the absence of clear direction from the supreme court regarding the applicable standard for reviewing the county's decision, the court determined that such decision was subject to the ARL.[21]

What is surprising about the ruling is that the zoning provisions in the Counties Code do not provide for appeals under the ARL except when a final decision of a county zoning board of appeals is involved.[22] Because the ARL applies only when specifically authorized by statute,[23] it would therefore seem inapplicable to the county board's decision on a special use permit. Nevertheless, the court looked to an entirely separate article of the Counties Code and concluded that the ARL would apply. Specifically, the court relied on Section 1-6007 of the Counties Code, which states: "The decisions of the county board are subject to judicial review under the Administrative Review Law."[24]

Although Section 1-6007 appears in a division of the Counties Code that provides an administrative process for determining the validity of monetary claims against a county,[25] the *Gallik* court stretched this provision to find some ascertainable basis for reviewing special use permit decisions as quasi-judicial actions instead of pursuant to the familiar "*LaSalle* factor" analysis used for reviewing legislative zoning actions.[26] One requires little imagination to appreciate the mischief and confusion that the *Gallik* court's interpretation of Section 1-6007 will cause if literally applied to any decision of a county board.[27]

In *Shipp v. County of Kankakee*,[28] the Appellate Court for the Third District affirmed the denial of a special use permit on procedural

grounds, but it implicitly followed *Gallik* when it noted in dicta that denials of special use permits after *Klaeren* "are subject to administrative review."[29] Curiously, the court did not explain how it would have reviewed the entire case, which involved a county board's denial of both a variance as well as a special use permit. Presumably, under *Klaeren* and *Hawthorne*, the court would have reviewed the special use permit on the public hearing record pursuant to the ARL, but it would have conducted a *de novo* evidentiary trial on the variance. This would not only nurture inefficiency, but it would increase the risk of inconsistent outcomes. (Prior to *Klaeren*, a court would have conducted a single *de novo* trial to seek evidence on both issues.)

The confusion resulting from *Klaeren* may be best illustrated in the case of *Oak Grove*.[30] In that case, the Appellate Court for the Second District reconsidered a prior decision[31] after a remand from the Supreme Court to determine the effects of *Klaeren*. The court ultimately decided that it would not apply *Klaeren* retroactively,[32] but the Supreme Court has again remanded the case to have the appellate court consider further whether *Klaeren* should apply.[33] Interestingly, the appellate court chose not to apply *Klaeren* retroactively because to do so would change the nature of the special use application from a petition to a legislative body (which does not require a lawyer to represent a corporation) to the filing of a quasi-judicial action (which does require a licensed attorney to represent a corporation).[34] Were *Klaeren* to apply in *Oak Grove*, the plaintiff church would have its claim dismissed because its pastor filed the original special use request on behalf of the church, and he was not a licensed attorney.[35] Thus, in addition to pointing out a fundamental difference in the manner that residents interact with their local governments pursuant to a legislative process versus an adjudicative process, *Oak Grove* also illustrates how *Klaeren* has made the entire zoning process more legalistic thereby making it less accessible to the individual citizen.[36]

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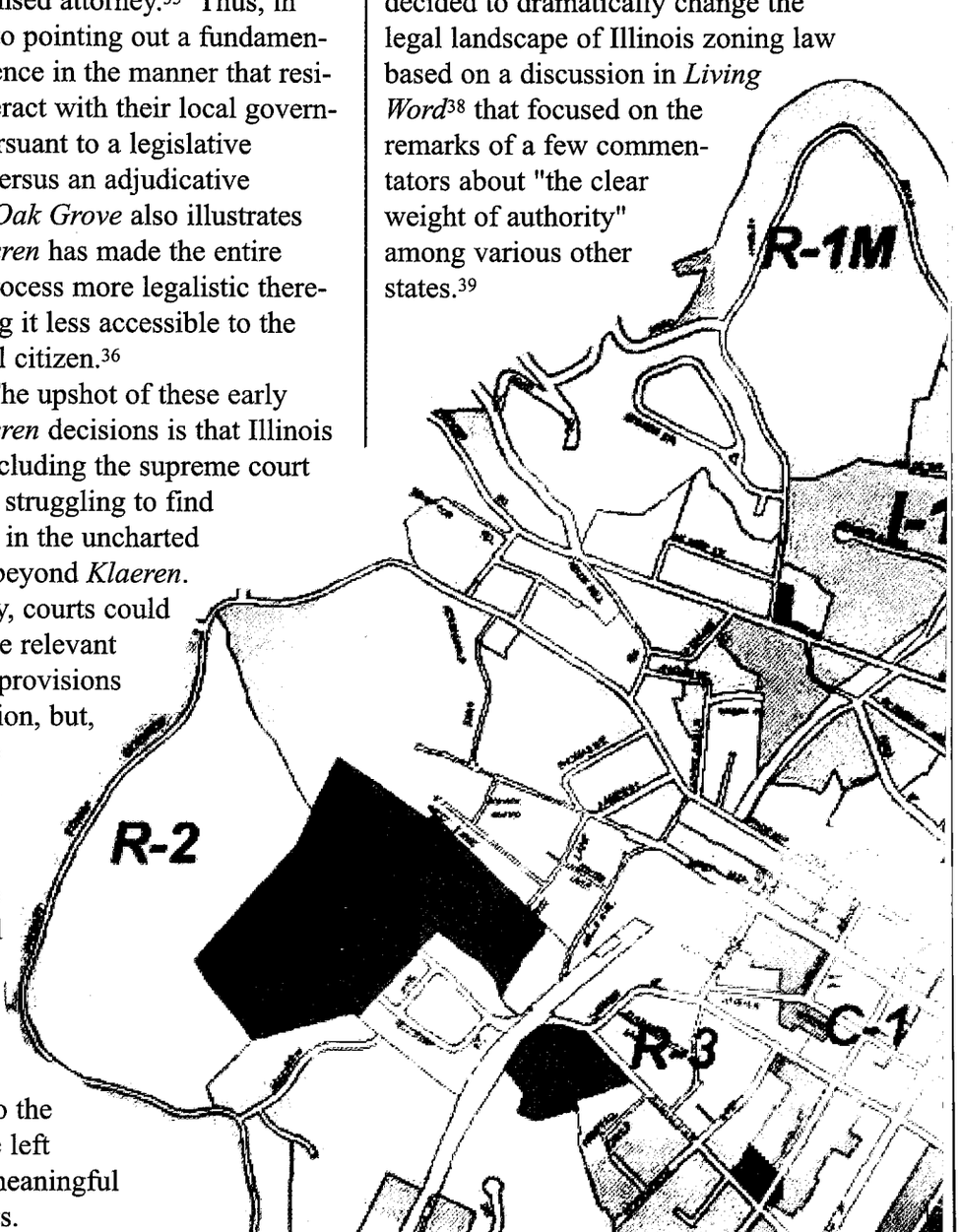
The upshot of these early post-*Klaeren* decisions is that Illinois courts, including the supreme court itself, are struggling to find their way in the uncharted territory beyond *Klaeren*. Ordinarily, courts could look at the relevant statutory provisions for direction, but, as will be discussed below, *Klaeren* cannot be reconciled with the statutory schemes for local zoning, so the courts are left without meaningful guideposts.

The Statutory Bases for Special Use Permits: A Second Look

In rejecting more than forty years of precedent, the supreme court did not identify any intractable problems with the pre-existing manner for adjudicating zoning disputes in Illinois.[37] Nor did the court point to any glaring inconsistencies between the judicial treatment of special use permits as legislative actions and the statutory requirements in the zoning enabling acts. Rather, the court decided to dramatically change the legal landscape of Illinois zoning law based on a discussion in *Living Word*[38] that focused on the remarks of a few commentators about "the clear weight of authority" among various other states.[39]



Unfortunately, neither *Klaeren* nor *Living Word* showed the court undertaking even a cursory review of the relevant statutory language regarding special uses and local zoning.[40] This profound oversight of the underlying statutory basis for local zoning authority begs the question of whether the *Klaeren* court improperly donned the General Assembly's hat in making its ruling.

Had the supreme court attempted to interpret the zoning statutes instead of re-writing them sight unseen, several key points would have become immediately apparent. First, the General Assembly fully understood the difference between quasi-judicial actions and legislative actions by specifically subjecting certain local zoning decisions to the ARL. In the zoning enabling acts of the Municipal Code and the Counties Code, the General Assembly expressly established that final zoning actions taken by a local zoning board are to be reviewed under the ARL.[41] No similar provisions are made for the review of actions of the corporate authorities of municipalities or counties, even though the General Assembly has authorized or required that a variety of zoning actions can only be granted by having the corporate authorities adopt an ordinance.[42]

Second, in developing procedures for granting special use permits, the General Assembly neither required a municipal zoning board of appeals to be involved,[43] nor permitted any body *other* than the corporate authorities to approve a special use permit-and then only by ordinance.[44] Furthermore, any suggestion that the adoption of an ordinance was intended to be a mere expression of a quasi-judicial action fails because the General Assembly authorized the ultimate legislative tool-a super-majority vote-to carry the day over an unfavorable recommendation from the hearing body.[45]

Third, the General Assembly's specific intent *not* to have ordinance-approved special uses subject to administrative review is apparent in the zoning statutes providing for the appointment of a hearing officer.[46] In the Counties Code, whenever a hearing officer makes a final zoning decision, review is available under the ARL.[47] But when a county board makes the final decision on a zoning petition, the General Assembly did not authorize administrative review. The General Assembly's intent is more clear under the hearing officer provisions of the Municipal Code: if a hearing officer makes the final decision on variances or *special uses*, those decisions are to be reviewed under the ARL; if a hearing officer merely recommends and the corporate authorities retain final decision-making authority, review under the ARL is *not* authorized.[48] Moreover, to grant a variance or special use permit that was not favorably reviewed by the hearing officer, a super-majority vote of the corporate authorities is required.[49]

In light of the Municipal Code provisions regarding hearing officers, the supreme court's rationale for distinguishing between variances and special uses as explained in *Hawthorne*[50] completely breaks down. In *Hawthorne*, the supreme court asserts that "Illinois law makes a clear distinction between variances and special uses,"[51] yet the General Assembly treats them identically in 65 ILCS 5/11-13-14.1(C). While variances and special uses may be used differently and under different circumstances, they are both tools that the General Assembly has treated as legislative actions when in the hands of the local corporate authorities.

Although the supreme court in *Living Word* suggested that the General Assembly exhibited its intent to treat special uses as quasi-judicial actions when it amended the special use provisions of the Municipal Code in 1969,[52] the court's analysis on that point also fell short. In citing *Geneva Residential Association v. City of Geneva,*[53] the court failed to note that the *Geneva Residential* case did not review a municipality's decision-making, but the municipality's compliance with statutory procedures.[54]

Based on the statutes granting zoning powers to local governments, it is evident that the General Assembly has made express, conscious decisions to treat certain zoning actions as quasi-judicial that should be reviewed under the ARL.

Moreover, the *Geneva Residential* court considered a statutory amendment that required a hearing body to make findings of fact on special uses and variances.[55] Further, the *Geneva Residential* court concluded that this change made "the *fact-finding process* for municipal special use permits . . . vested in an administrative agency"-to-wit: a zoning board of appeals or other hearing body[56]-thereby *removing* "the *local legislature* . . . from the fact-finding process" and eliminating "*ad hoc granting of permits* by the local legislature."[57] Because the underlying concern was that "Legislative bodies are not equipped . . . to *ascertain factual* questions which depend upon evidence of individual circumstances,"[58] the court in *Geneva Residential* saw the separation of the fact-finding role

from the decision-making role as *preserving* the legislative function of the municipal corporate authorities in granting special uses.[59]

As a final example that special uses are legislative acts based upon the statutory structure of the zoning enabling acts, one merely needs to trace the recent statutory history of special uses. In particular, after the 1969 changes to the Municipal Code discussed in *Geneva Residential*, the General Assembly adopted two major laws regarding special use permits. The first occurred in 1985 when the General Assembly adopted the hearing officer provisions in the zoning enabling act of the Municipal Code.[60] As discussed above,[61] those provisions allowed hearing officers to serve as the decision-maker for special uses,[62] or as the fact-finder for the corporate authorities who must adopt an ordinance approving a special use permit.[63] Importantly, only in instances where the hearing officer was also the decision-maker did the General Assembly deem it appropriate to apply the ARL.[64]

The second legislative development occurred in 1998, when the General Assembly gave statutory recognition to special uses in the Counties Code.[65] Certainly, if the General Assembly intended special use decisions by a county board to be quasi-judicial in nature, it would have made these decisions subject to the ARL. But it did not. The General Assembly did, however, authorize a county to delegate its special use decision-making authority to a hearing officer,66 whose decisions are subject to review under the ARL as quasi-judicial actions.[67]

Based on the statutes granting zoning powers to local governments, it is evident that the General Assembly has made express, conscious decisions to treat certain zoning actions as quasi-judicial that should be reviewed under the ARL. It is equally evident that the General Assembly has not subjected any local zoning decisions that are made by ordinance to the ARL. Given the longstanding history of judicial review of ordinance-approved zoning decisions (including special uses) as legislative actions subject to *de novo* review pursuant to the *LaSalle* factors, as well as the General Assembly's recent enactments involving special uses, the proper conclusion to draw is that the General Assembly intended special uses to be legislative in nature.[68] Thus, in declaring that special uses are quasi-judicial in nature, the *Klaeren* Court ignored the statutory scheme relating to special uses and effectively usurped the General Assembly's legislative prerogative regarding the exercise of local zoning powers.

Short- and Long-Term Solutions

By declaring that special use ordinances are adjudicative in nature, the supreme court overstepped its authority and re-wrote Illinois statutory law. Moreover, in doing so, the court has confused Illinois zoning, both as a practical matter,[69] and as a legal matter.[70]

The General Assembly must step in and clean up the mess that *Klaeren* has caused. A simple, quick fix is available: add a sentence at the end of Section 11-13-13 of the Municipal Code that states: "All final decisions of the corporate authorities under this Division shall be legislative actions."[71]

Although the Supreme Court may have decided *Klaeren* for the wrong reasons,[72] perhaps Illinois is out of step with other states. If so, there may be good reason to re-examine comprehensively the legislative scheme for local zoning decisions. This would be a task for the General Assembly, however, not the courts.

1. 202 Ill. 2d 164 (2002). The Court issued its opinion on October 18, 2002, and a subsequent order denying a petition for rehearing on December 2, 2002. The petition for rehearing raised several issues, including a request to have the Court's opinion apply prospectively only.
2. 202 Ill. 2d at 183.
3. *See*, e.g., "If It Ain't Broke, Fix It?: Assessing the Impact of *Klaeren* v. Lisle on Illinois Zoning Law," 8 Pub. Int. L. Rep.10 (2003).
4. *In re Victory Auto Wreckers, Inc., Village of Bensenville Community Development Commission*, No. 041402-01.
5. See 735 ILCS 5/3-111(a)(7)(Administrative Review Law provision calling for remand for the purpose of taking additional evidence).
6. For municipalities, the zoning enabling act is 65 ILCS 5/11-13-1 et seq.; county zoning authority is found at 55 ILCS 5/5-12001 et seq.
7. 204 Ill. 2d 243 (2003).
8. *Klaeren*, 202 Ill. 2d at 183.
9. Id. at 184, quoting *Hannah v. Larche*, 363 U.S. 420, 442 (1960).
10. *Hawthorne*, 204 Ill. 2d at 253.
11. Id. at 253 n. 2.
12. 65 ILCS 5/11-13-5; see also 55 ILCS 5/5-12009 (in the Counties Code, variances are authorized only "in accordance with general or specific rules" contained in the county zoning ordinance).
13. 65 ILCS 5/11-13-1.1; see also 55 ILCS 5/5-12010(a, c).
14. *Central Transp., Inc. v. Village of Hillside*, 210 Ill. App. 3d 499, 503 (1st Dist. 1991), quoting *Parkview Colonial Manor Investment Corp. v. Board of Zoning Appeals*, 70 Ill. App. 3d 577, 581 (1979)(emphasis added).
15. 735 ILCS 5/3-101 et seq.
16. 65 ILCS 5/11-13-5, 5/11-13-13; 55 ILCS 5/5-12009, 5/5-12012.
17. *Hawthorne*, 204 Ill. 2d at 253.
18. Id.
19. See *Thompson v. Cook County Zoning Board of Appeals*, 96 Ill. App. 3d 561, 571 (1st Dist. 1981).
20. 335 Ill. App. 3d 325 (2d Dist. 2002).
21. Id. at 332.
22. 55 ILCS 5/5-12012.
23. 735 ILCS 5/3-102 (the ARL applies "where the Act creating or conferring power on such [administrative] agency, by express reference, adopts the provisions of" the ARL).
24. 55 ILCS 5/1-6007.
25. See 55 ILCS 5/1-6005, 1-6006.
26. See *LaSalle Nat'l Bank v. County of Cook*, 12 Ill. 2d 40, 46-48 (1957).
27. Two examples should demonstrate the point. First, if a county board decides to reschedule a meeting to a day inconvenient to a citizen who desired to attend the meeting and who requested that the original date not change, that decision could be subject to appeal under the ARL. Although legislative bodies have typically enjoyed freedom from outside interference in setting their meeting schedule provided the Open Meetings Act is observed, under *Gallik* those decisions may be subject to judicial scrutiny through the filing of nuisance administrative review cases. Second, a county board's adoption of a "pooper scooper" ordinance or any other regulatory matter could also be subject to judicial scrutiny under

the ARL-even though (i) such ordinances involve no adjudication and are therefore purely legislative in nature, see *Klaeren*, 202 Ill. 2d at 184 (quoting *Hannah v. Larche*), and (ii) such ordinances can be adopted without a prior hearing (in which case there is no clear record to review).
28. *Shipp v. County of Kankakee*, No. 3-02-0642 (3rd Dist., 12/16/03)(slip opinion).
29. Id., slip opinion, at 4.
30. 338 Ill. App. 3d 967 (2d Dist. 2003).
31. *Oak Grove Jubilee Center, Inc. v. City of Genoa*, 331 Ill. App. 3d 102 (2d Dist. 2002).
32. 338 Ill. App. 3d at 975.
33. *Oak Grove Jubilee Center, Inc. v. City of Genoa*, ___ Ill. 2d ___, 796 N.E.2d 1059 (2003).
34. 338 Ill. App. 3d at 976.
35. Id.
36. In light of the quasi-judicial role that local legislators must play in special use proceedings after *Klaeren*, there are serious questions whether they can communicate with their constituents at all about pending zoning requests, except as part of the public hearing process. Cf. *City of Chicago v. American Nat'l Bank*, 171 Ill. App. 3d 680, 690 (1st Dist. 1988)(in building code enforcement matter, adjudicators must give "special attention to ex parte" contacts, which may "turn up issues of due process violations"); but see *Southwest Energy Corp. v. Illinois Pollution Control Bd.*, 275 Ill. App. 3d 84, 92 (4th Dist. 1995)(ex parte contacts not necessarily a due process issue in landfill siting proceedings); see also *Jennings v. Dade County*, 589 So. 2d 1337 (Fla. 3d DCA 1991)(ex parte contacts invalidate zoning proceeding under State statutory scheme that makes zoning petitions quasi-judicial in nature); accord E. McQuillin, 8A Municipal Corporations, Sec. 25.262, 25.262.50 at 350-53 (3d ed. 1994). Moreover, because the possibility of a due process claim arising from ex parte contacts (as well as Section 1983 damages and Section 1988 attorney fee awards) is palpable in our litigious society, local governments might be well advised as a risk management strategy to avoid all ex parte contacts. This, unfortunately, would run counter to the underlying policies of open government that the General Assembly has promoted. See, e.g., 5 ILCS 120/1 et seq. (Open Meetings Act).
37. In fact, the only critical comments cited from any Illinois authority was a specially concurring opinion in a case decided forty years earlier. See *Ward v. Village of Skokie*, 26 Ill. 2d 415, 424-25 (1962)(Klingbiel, J.)(expressing concern that legislative decisions regarding special uses "are not judicially reviewable" and creates "the obvious opportunity . . for special privilege, [and] for the granting of favors to political friends and financial benefactors . . [because] the courts may not inquire into the motives or reasons on which the legislative body acted"). Justice Klingbiel's concerns, however urgent they may have been in 1962, lack the same urgency today for several reasons. First, Justice Klingbiel's fear that legislative decisions regarding special uses would be unreviewable failed to appreciate the emergence of the LaSalle factors in giving courts the tools to review local zoning decisions de novo and without consideration of legislative motives. Second, as discussed infra at notes 52-59 and accompanying text, the statutory authority for special uses was modified to address at least in part Justice Klingbiel's concern. Most importantly, there has been a basic paradigm shift in the way local governments act since 1962, to-wit: the adoption of the Open Meetings Act in 1982 (P.A. 82-378), 5 ILCS 120/1 et seq., followed by the Freedom of Information Act in 1984 (P.A. 83-1013), 5 ILCS 140/1, et seq. Thus, the all-too-common "back room" deals that may have prompted Justice Klingbiel's remarks lack the same currency today.
38. *City of Chicago Hts. v. Living Word Outreach Full Gospel Church & Ministries, Inc.*, 196 Ill. 2d 1 (2001).
39. *Klaeren*, 202 Ill. 2d at 182-83, quoting Living Word, 196 Ill. 2d at 14, 15-16.
40. In fact, in *Living Word*, the Court cited only two provisions of the zoning enabling act of the Illinois Municipal Code, and in neither instance was the actual statutory language even discussed. See 196 Ill. 2d at 17, 24. Moreover, in *Klaeren*, the Court did not even cite the provisions of the zoning enabling act in the portion of its decision that overturned more than forty years of precedent. See 202 Ill. 2d at 182-84.
41. 65 ILCS 5/11-13-13 (last amended in 1982); 55 ILCS 5/5-12012 (last amended in 1990). These amendment dates are important in light of the Court's discussion in *Living Word* regarding the effects of certain statutory amendments made in 1969. See 196 Ill. 2d at 15-16; see also infra, notes 52-59 and accompanying text.
42. See, e.g., 65 ILCS 5/11-13-1.1 (special use permits); 65 ILCS 5/11-13-2 (adoption of a new zoning code); 65 ILCS 5/11-13-5 and 11-13-10 (variances in municipalities having populations less than 500,000); 65 ILCS 5/11-13-14 (amendment to zoning ordinance regulations and zoning map designations); 55 ILCS 5/5-12007 (adoption of zoning ordinance); 55 ILCS 5/5-12009 (variances); 55 ILCS 5/5-12009.5 (special use permits); 55 ILCS 5/5-12014(b) (amendment to zoning ordinance regulations and zoning map designations). Note that the Counties Code authorizes that such actions may be approved by the adoption of an ordinance or a resolution.
43. Rather, the public hearing on a special use request is to be conducted before "some commission or committee designated by the corporate authorities." 65 ILCS 5/11-13-1.1.
44. 65 ILCS 5/11-13-1.1; see also 55 ILCS 5/5-12009.5(d)("The county board may, by ordinance and without a further public hearing, adopt any proposed special use..."). The only exception is when a hearing officer is involved. See infra notes 46-49 and accompanying text.
45. 65 ILCS 5/11-13-1.1.
46. 65 ILCS 5/11-13-14.1(C); 55 ILCS 5/5-12015(A)(2, 3).
47. 55 ILCS 5/5-12015(A)(3).
48. 65 ILCS 5/11-13-14.1(C)(1, 2).
49. 65 ILCS 5/11-13-14.1(C)(1).
50. Hawthorne, 204 Ill. 2d at 253 n. 2, 257-58.
51. Id. at 253 n. 2.
52. 196 Ill. 2d at 15-16, citing *Geneva Residential Ass'n v. City of Geneva*, 77 Ill. App. 3d 744 (2d Dist. 1979).
53. 77 Ill. App. 3d 744 (2d Dist. 1979).
54. Id. at 751, 756.
55. Id. at 754; see 65 ILCS 5/11-13-11. This oversight alone undermines the Court's analysis in *Living Word* and its decision in *Klaeren*, especially after the Court's declaration in Hawthorne that a variance granted by the ordinance of a village board "is a legislative act." 204 Ill. 2d at 253.
56. 77 Ill. App. 3d at 754 (emphasis added).
57. Id. at 754-55 (emphasis added). Eliminating such ad hoc decision-making was one of the concerns expressed in Justice Klingbiel's special concurrence in *Ward v. Village of Skokie*, 26 Ill. 2d at 419-26, quoted in *Geneva Residential*, 77 Ill. App. 3d at 753-55.
58. 77 Ill. App. 3d at 754, quoting *Ward*, 26 Ill. 2d at 424-35 (Klingbiel special concurrence)(emphasis added).
59. This is clear from the court's de novo review of the substantive terms of the approved special use permit: the court treated it as a legislative decision that was subject to hearing based on the LaSalle factors. 77. Ill. App. 3d at 757-59.
60. 65 ILCS 5/11-13-14.1 (P.A. 84-960).
61. See supra text accompanying notes 46-49.
62. 65 ILCS 5/11-13-14.1(C)(2).
63. 65 ILCS 5/11-13-14.1(C)(1).
64. 65 ILCS 5/11-13-14.1(C)(2).
65. 55 ILCS 5/5-12009.5 (P.A. 90-175).
66. 55 ILCS 5/5-12009.5(e).
67. 55 ILCS 5/5-12012.
68. See *People ex rel. Klaeren v. Village of Lisle*, 316 Ill. App. 3d 770, 782 (2d Dist. 2000), aff'd 202 Ill. 2d. 164 (2002)("The legislature is presumed to know the judicial construction that a statute has been given, and when the legislature re-enacts a statute without modification it is assumed to have intended the same effect").
69. See notes 3-5 and accompanying text, supra.
70. See Part B, supra.
71. See "*If It Ain't Broke, Fix It?*" 8 Pub. Int. L. Rep. at 29. A similar amendment to Section 5/5-12012 of the Counties Code could also be adopted.
72. Yet another snafu in the Court's analysis was relying on *E&E Hauling, Inc. v. County of DuPage*, 77 Ill. App. 3d 1017 (2d Dist. 1979) for identifying the essential elements for an adjudicative hearing. The *E&E Hauling* case involved a rezoning, 77 Ill. App. 3d at 1020, which courts have long-recognized as a purely legislative action. See *Bieretz v. Village of Montgomery*, 67 Ill. App. 2d 403 (2d Dist. 1966).