

**City of West Chicago, Illinois
Before the City Council**

The 1,000 Foot Residential Zoning Setback Does Not Apply to this Project Due to
Impossibility.

415 ILCS 5/22.14 states: “No person may establish any pollution control facility for use as a garbage transfer station, which is located less than 1000 feet from the nearest property zoned for primarily residential uses or within 1000 feet of any dwelling..”

The most important rule of statutory construction is to ascertain the intent of the legislature when it adopted the operative statute. In this case the context of the Environmental Protection Act makes it clear that the Legislature intended to protect residential land uses from nearby pollution control facility development. There is no indication in the statute or anywhere else in the Pollution Control Act that the Legislature ever intended this setback requirement to be an absolute prohibition on pollution control facility development in the absence of actual or even possible nearby residential development and land uses.

This issue first came up in a recent transfer station siting case in Southern Illinois, and the Pollution Control Board was unequivocal in its finding that the *impossibility* of residential development negates the applicability of the 1000 setback requirement to properties that are zoned for primarily residential uses. In the Caseyville Transfer Station case the Board held:

“Petitioners argue that the residential setback requirement of Section 22.14 of the Act has not been met. Rox. Br. at 5. This is because there are four parcels of property zoned Single Family District - Manufactured Home District, and two parcels of property zoned Manufactured Home Park District, located within 1,000 feet of the Site. Id. The Application includes a description of land uses surrounding the Site. R. at A-0016, A-0031-32. Further, Application Figure 2 shows land uses within 1,000 feet of the Site. See Area Land Use Map (App. Fig. 2). The Application also includes a list of parcels located within 1,000 feet of the Site, including owners and land use. See List of Parcels Within 1,000 Feet (App. Exh. I). Regarding the parcels zoned for residential use, CTS states in the Application that those parcels were purchased by St. Clair County under a Federal Emergency Management Agency (FEMA) buy-out program and that the parcels are encumbered by permanent deed restrictions prohibiting any future residential land use. R. at A-0016, citing Deeds of Parcels within 1,000 Feet of Site (App. Exh. J). The warranty deeds state that the Grantee “agree to conditions which are intended to restrict the use of the land to open space in perpetuity” and that the Grantee “agrees that no new structures or improvements shall be erected on the premises other than a restroom or a public facility that is open on all sides and functionally related to the open space use.’ “

ROXANA LANDFILL, INC., PETITIONER v. VILLAGE BOARD OF THE
VILLAGE OF CASEYVILLE, ILLINOIS; VILLAGE OF CASEYVILLE, ILLINOIS;
AND CASEYVILLE TRANSFER STATION, L.L.C., RESPONDENTS VILLAGE
OF FAIRMONT CITY, ILLINOIS, PETITIO, 2014
WL 12740295 (Ill.Pol.Control.Bd.), 29

This unanimous decision was affirmed by the Appellate Court, which reviewed the PCB decision and found in an unpublished opinion:

“With regard to residential setback provisions of section 22.14 of the Act (415 ILCS 5/22.14 (West 2014)), the IPCB noted that the permanent deed restrictions in the parcels purchased by St. Clair County under the FEMA buy-out program provided that the grantee “agree[d] to conditions which [were] intended to restrict the use of the land to open space in perpetuity” and that the grantee “agree[d] that no new structures or improvements shall be erected on the premises other than a restroom or a public facility that [was] open on all sides and functionally related to the open space use.... Although not a criterion under section 39.2 of the Act (415 ILCS 5/39.2 (West 2014)), the petitioners reference Alley's affidavit to assert that CTS's proposed transfer station failed to meet the residential setback required under section 22.14 of the Act. See 415 ILCS 5/22.14(a)(West 2014) (“[n]o person may establish any pollution control facility for use as a garbage transfer station, which is located less than 1000 feet from the nearest property zoned for primarily residential uses or within 1000 feet of any dwelling”). The petitioners argue that CTS's proposed facility violates the 1000 foot setback requirements of the four parcels of property zoned Single Family District-Manufactured Home District and the two parcels zoned Manufactured Home District.As the IPCB found, however, pursuant to a FEMA program, St. Clair County purchased the parcels within 1,000 feet of the site that were zoned residential use and placed permanent deed restrictions on them barring any residential use. See *Boschelli v. Villa Park Trust & Savings Bank*, 23 Ill. App. 3d 82, 85 (1974) (if restrictive covenants are more restrictive than zoning requirements, they prevail as to purchasers). Accordingly, the evidence supported the IPCB's determination that the facility was located so as to minimize incompatibility with the character of the area and to minimize the effect on the value of surrounding property. Accordingly, we find that the IPCB's determination was not against the manifest weight of the evidence.”

Roxana Landfill, Inc. v. Illinois Pollution Control Bd., 2016 WL 4005892 (Ill.App. 5 Dist.), 11 (Ill.App. 5 Dist.,2016)

So, clearly the actual, real world possibility of residential development on a particular parcel supersedes the language of the statute, language which does not mention exceptions or qualifications even though it implies the same within its implied directive that “primarily” residential uses be considered. The logical point is that the language in the statute, while not creating explicit exceptions to the setback requirement mandates a factual inquiry into the actual subject property its actual use and its possibility of residential development.

In this case the zoning at issue is Estate Residential zoning only over the active railroad tracks which run east of the site. More specifically, two railroad properties are present directly east of the site, which are zoned Estate Residence District (ER-1). The West Chicago Municipal Code indicates that the purpose of the ER-1 classification is to establish regulations for larger lot single-family residential areas, and that neighborhoods in this district shall consist of very low-density single-family homes. Permitted uses are single-family detached dwellings, home occupations, small community residences, forest preserves, and parks and recreational areas when publicly owned. Accessory buildings may include swimming pools, bathhouses, tennis courts, green houses, guesthouses, and horses/stables. Allowable "special uses" are golf courses including driving range, bar, restaurant, meeting and banquet rooms; country club; site reclamation and cleanup plan areas; and above ground service facilities.

The western railroad property is currently owned by the Union Pacific Railroad and the eastern railroad property is currently owned by Canadian National Railway. The railroads have been present for over seventy years, and remain active today. The properties are each approximately 100 feet wide, have steep banks that rise up approximately 10 feet above surrounding grade, and have no nearby vehicle access (see photographic log in Appendix 2-D1). The lot requirements for a residence in an ER-1 district include the following:

- Minimum lot area: 40,000 square feet;
- Minimum lot width: 100 feet at front, lot line and 200 feet at building line; and
- Minimum setbacks:
 - o Front yard: 50 feet;
 - o Corner side yard: 50 feet;
 - o Side yard: 30 feet;
 - o Rear yard: 50 feet; and
 - o Maximum lot coverage: 30%

The physical features of the property, the lack of access, and the above lot requirements make it physically impossible to construct a residence on the railroad property. Accordingly, this zoning classification on an active rail right of way seems to make no sense. The City of West Chicago explained this apparent contradiction and confirmed the impossibility of residential development when they stated in a recent letter:

"The Union Pacific Railroad Line runs east of the subject property within Union Pacific Right of Way (ROW). While the ROW is zoned ER, Estate Residential, as an active rail line there can be no residential development within this corridor. Furthermore, there is insufficient room for a legally-sized series of Estate Residential lots including access to those lots. Finally, the ER zoning designation for the corridor is a remnant classification from the time it was annexed to the City of West Chicago... As such, the city believes Section

22.14(a) 1,000 foot setback requirement is not applicable.” (Copy of City letter attached.)

The City’s letter confirms the impossibility of estate residential development now on the property based on its active use by trains, but also in the future, because the lots would be legally too small and would lack legal access. The fact that this is a zoning remnant from a previous annexation explains the anomaly.

If you read the whole statute, the focus is on actual residences within the setback area, which is consistent with the legislature’s intent to protect People. The impossibility of ever developing residences in the ER zoned area answers that question definitively.

Based on the foregoing, the 1000 foot setback does not apply to this site.

Respectfully submitted:

Lakeshore Recycling Systems., LLC

By George Mueller, its Attorney

CITY OF
WEST CHICAGO

WHERE HISTORY & PROGRESS MEET

August 24, 2022

RE: Residential-zoned property located east of 1655 Powis Road, West Chicago, Illinois

To Whom It May Concern:

Both the Union Pacific Railroad and the Canadian National Railroad operate parallel tracks on land running northwest to southeast, east of and adjacent to the subject property. The right-of-way for these rail lines carries a remnant zoning classification of Estate Residential, which is the classification assigned upon annexation. No effort was made to reclassify the property.

As an active rail corridor, there can be no residential development. Furthermore, there is insufficient room to construct homes on one-acre minimum lots and no convenient way to access what would be a narrow string of properties. Residential development on this property is physically impossible.

As such, the City concludes that the 1,000-foot setback requirement in 415 ILCS 5/22.14(a) is not applicable.

Please contact me if you have any questions.

Sincerely,



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Community Development Director and Zoning Administrator

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