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Illinois Annexation Agreements — Are We Behind the Times?*

BARBARA BARAN**

INTRODUCTION

The Illinois Annexation Agreement Statute has worked effectively. Illinois practitioners are accustomed to using the statute and an interesting body of case law has developed interpreting the statute. However, the statute only applies to annexation agreements with respect to land located outside municipal boundaries. It does not provide for such agreements with regard to land located within municipal limits. For this reason, the statute has fallen behind the times.

I. THE IMPETUS FOR DEVELOPER AGREEMENTS

The Illinois Annexation Agreement Statute was adopted in 1963 as part of the Illinois Municipal Code.[1] In general, the statute authorizes municipalities to enter into agreements with landowners to provide for the use and development of land over the life of the agreement. However, as the name of the statute suggests, annexation agreements may only apply to unincorporated land which may be annexed to a municipality, but not to land which is already incorporated.[2] By contrast, statutes in other states, including Florida,[3] Cali-

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* Adapted from a speech delivered at Northern Illinois University College of Law on March 5, 1992.

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1. ILL. REV. STAT. ch. 24, para. 11-15.1-1 to -15.1-5 (1991).

2. The statute provides in pertinent part: "[t]he corporate authorities of any municipality may enter into an annexation agreement with one or more of the owners of record of land in *unincorporated territory*." ILL. REV. STAT. ch. 24, para. 11-15.1-1 (1991) (emphasis added).

3. FLA. STAT. ANN. § 163.3220-3243 (West 1990 & Supp. 1992). The Florida legislature specifically authorized development agreements concerning property inside the local government's jurisdiction as follows: "Any local government may, by ordinance, establish procedures and requirements . . . to consider and enter into a development agreement with any person having a legal or equitable interest in real property located *within* its jurisdiction." FLA. STAT. ANN. § 163.3223 (West 1990) (emphasis added).

fornia,[4] Nevada[5] and Hawaii,[6] allow the same type of substantive agreements permitted by the Illinois Annexation Agreement Statute; such agreements, however, may also pertain to land located within municipalities. The issue before us today is whether the Illinois Annexation Agreement Statute should be amended to extend to land located within municipal boundaries.

According to a number of commentators, harsh vested rights rules in California and other states were the impetus for the adoption of development agreement statutes.[7] In the 1970's, in California, for example, a developer could spend substantial sums grading a site and constructing the infrastructure for a development, but be denied a building permit if the zoning of the property changed before a building permit was sought.[8] To avoid this result, the California legislature in

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4. CAL. GOV'T CODE §§ 65864-69.5 (West 1983 & Supp. 1992). California cities and counties are authorized to enter development agreements pertaining to land either within or outside their jurisdictional boundaries. If the property is situated in an unincorporated territory but is "within that city's sphere of influence," then the developer agreement becomes effective only upon completion of annexation proceedings within the time specified in the agreement. CAL. GOV'T CODE § 65865(b) (West Supp. 1992).

5. NEV. REV. STAT. ANN. §§ 278.020-0207 (Michie 1990 & Supp. 1991). "[A] governing body may, upon application of any person having a legal or equitable interest in land, enter into an agreement with that person concerning the development of that land." NEV. REV. STAT. ANN. § 278.0201 (Michie Supp. 1991).

6. HAW. REV. STAT. §§ 46-121-132 (1988). The Hawaii legislature has authorized counties to permit their executive officers to negotiate and enter development agreements "with any person having a legal or equitable interest in real property . . . ." HAW. REV. STAT. § 46-123 (1988).

7. *See, e.g.*, 4 EDWARD H. ZIEGLER, RATHKOPF'S THE LAW OF ZONING AND PLANNING § 50.06 (4th ed. 1992); William G. Holliman, Jr., *Development Agreements and Vested Rights in California*, 13 URB. LAW. 44, 47-49 (1981); Eric Sigg, *California's Development Agreement Statute*, 15 SW. U. L. REV. 695 (1985).

8. *See, e.g.*, Avco Community Developers, Inc. v. South Coast Regional Comm'n, 553 P.2d 546 (Cal. 1976). In *Avco*, after obtaining the necessary zoning changes and final map approval, the developer "proceeded to subdivide and grade the property." *Id.* at 549. Avco had constructed improvements such as storm drains, culverts, street improvements and utilities but could not obtain a building permit from the county until all grading was complete. *Id.* "Before that date, the company had spent $2,082,070 and incurred liabilities of $740,468 for the development of the tract" before being denied a developmental permit for lands which lay in the Coastal Zone. *Id.* Delivering the opinion of the court, Justice Mosk proclaimed:

> [N]either the existence of a particular zoning nor work undertaken pursuant to governmental approvals preparatory to construction of buildings can form the basis of a vested right to build a structure which does not comply with the laws applicable at the time a building permit is issued. By zoning the property or issuing approvals for work preliminary to construction the

1979 adopted a statute which provided that a developer could enter into an agreement with a municipality and freeze those ordinances which would apply to the development during the term of the agreement.[9]

Fortunately, Illinois does not have such harsh vesting rules. Developers can obtain vested rights if they experience a substantial change in position in reliance upon the probability that a building permit will issue.[10] Nevertheless, a developer must file a lawsuit to obtain a vested rights determination. Such litigation is both time-consuming and expensive and for those reasons is not advantageous for municipalities or developers. Moreover, litigation does not provide the certainty in the development process which developers legitimately seek.

The current range of laws which may apply to a development project is astonishing. A development may be subject to federal, state and local laws covering an array of regulations. For example, a permit to fill a wetland may be required from the Army Corps of Engineers; a permit for a facility planning area change for sewerage treatment purposes may be required from the Illinois Environmental Protection Agency; permits for the location and configuration of curb cuts may be required from Cook County or the Illinois Department of Transportation; and zoning and other land use approvals may be required from a municipality.

This multiplicity of required approvals, the number and differing levels of administrative and governing bodies involved, the extensive time required to obtain the necessary approvals, and the substantial expense entailed, have led developers to seek as much certainty as possible in the development process. Similarly, municipalities seek

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> government makes no representation to a landowner that he will be exempt from the zoning laws in effect at the subsequent time he applies for a building permit or that he may construct particular structures on the property, and thus the government cannot be estopped to enforce the laws in effect when the permit is issued.

Id. at 551. Ironically, Justice Mosk relied upon underlying policy rationales of avoiding "serious impairment of the government's right to control land use policy" and preventing developers from "freez[ing] the zoning laws applicable to a subdivision or planned unit development as of the time these events occurred." *Id.* at 554. Those same rationales now support Developer Agreement Statutes which guarantee the developer vested rights.

9. CAL. GOV'T CODE §§ 65864-69.5 (West 1983 & Supp. 1992).

10. Reasonable reliance on the mere probability that a permit is forthcoming is sufficient for developers to achieve a vested right to develop. *See, e.g.*, Cos Corp. v. City of Evanston, 190 N.E.2d 364 (Ill. 1963).

certainty with regard to the location, level and type of development to better plan for needed public improvements such as roads, sewers, water lines, parks and schools. The development agreement permits at least some certainty to be built into the system. From a municipal perspective, the development agreement is an excellent device for controlling all aspects of a development and knowing in advance what form the development will take.[11] As the court said in *Village of Orland Park v. First Federal Savings & Loan Association*:

> The authorization of pre-annexation agreements by statute . . . serves to further important governmental purposes, such as the encouragement of expanding urban areas and to do so uniformly, economically, efficiently and fairly with optimum provisions made for the establishment of land use controls and necessary municipal improvements including streets, water, sewer systems, schools, parks, and similar installations. This approach also discourages fragmentation and proliferation of special districts. Additional positive effects of such agreements include controls over health, sanitation, fire prevention and police protection, which are vital to governing communities.[12]

From the developer's viewpoint, the development agreement provides some assurance that the law will remain fixed while the development proceeds. Therefore, from both a municipality's and a developer's standpoint, developer agreements are a substantial benefit.

Are developer agreements really contract zoning in disguise? Illinois courts, like so many others across the United States, decry contract zoning. It is hornbook law that a municipality cannot contract away its police power. However, in *Elm Lawn Cemetery Company v. City of Northlake*,[13] a property owner challenged, as contract zoning, an annexation agreement provision which allowed a municipality to disconnect land upon the developer's failure to improve or develop the property for industrial use. In rejecting that contention, and in upholding that provision of the annexation agreement, the court said: "'[e]nforcement of the agreement according to its plain terms in no way infringes the discretionary power of the board since

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11. *See generally* ZIEGLER, *supra* note 7, § 50.07 (Supp. 1991); Holliman, *supra* note 7, at 64.

12. 481 N.E.2d 946, 950 (Ill. App. Ct. 1985) (allowing Village to enforce terms of a pre-annexation agreement against a successor owner).

13. 237 N.E.2d 345 (Ill. App. Ct. 1968).

it had already exercised its discretion.'"[14] This statement is the key. In Illinois, at the time a municipality enters into an annexation agreement, it is exercising its discretion to determine the proper zoning for the property.

Moreover, the Illinois Annexation Agreement Statute has a built-in safeguard. Before a municipality can execute an annexation agreement, all requisite public hearings on underlying land use approvals must have been held. Therefore, development agreements are not subject to serious challenge as contract zoning.

II. INTERPRETING THE ILLINOIS ANNEXATION AGREEMENT STATUTE

The Illinois Annexation Agreement Statute could be used as a basis for a development agreement statute. The procedures specified in the statute are reasonable and workable on a practical level. The statute sufficiently delineates the matters which may be included within an annexation agreement without being unduly restrictive. The statute could be amended to include incorporated land within its purview. Following is an examination of the provisions of the current statute.

A. PARTIES AND PROPERTY COVERED BY THE AGREEMENT

Section 11-15.1-1 allows a municipality to enter into an agreement "with one or more of the owners of record of land in unincorporated territory."[15] By referring to "record owner," the Illinois Annexation Agreement Statute tracks the general annexation statute contained in article seven of the Illinois Municipal Code[16] which requires that a petition for annexation be signed by the landowner of record. As a practical matter, however, persons in addition to the landowner of record are frequently parties to an annexation agreement. For example, land trusts are often the landowner of record in Illinois. Because land trustees always attach a statement to annexation agreements exculpating the trust from any obligations imposed by the agreement, the beneficiaries of the trust are typically included as parties to insure performance of the agreement. If a developer is involved with the property, then the developer is made a party to the agreement.

Section 11-15.1-1 also specifies the land which may be subject to an annexation agreement. Until January 1, 1991, the statute stated that it applied to "land in any territory which may be annexed to

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14. *Id.* at 348 (quoting Arlington Heights Nat'l Bank v. Village of Arlington Heights, 213 N.E.2d 264, 269 (Ill. 1965)).

15. ILL. REV. STAT. ch. 24, para. 11-15.1-1 (1991).

16. ILL. REV. STAT. ch. 24, para. 7-1-2 (1991).

such municipality."[17] Now the statute reads: "[t]hat land may be annexed to the municipality in the manner provided in Article 7 at the time the land is *or becomes* contiguous to the municipality."[18] The statute was amended as a result of the decision rendered in *Village of Lisle v. Action Outdoor Advertising Company*.[19]

In *Lisle*, the Village of Lisle and a developer entered into an annexation agreement which pertained to land which was not contiguous to the village. After the annexation agreement had been signed, the developer requested and received a permit from the county to erect a large sign on the property. The Village of Lisle rushed into court claiming that the annexation agreement prevented such signage. Rather than analyzing the issues from the perspective of contract law, the Court held the annexation agreement invalid because it pertained to property which was not contiguous to the municipality at the time the annexation agreement was signed.[20] The amendment to Section 1-15.1-1 attempts to address the problems created by the *Lisle* court by authorizing annexation agreements which apply to land which is not contiguous and by allowing municipalities to exert control over property which is the subject of an annexation agreement before the property is annexed.

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17. ILL. REV. STAT. ch. 24, para. 11-15.1-1 (1989).

18. ILL. REV. STAT. ch. 24, para. 11-15.1-1 (1991) (emphasis added).

19. 544 N.E.2d 836 (Ill. App. Ct. 1989).

20. *Id.* at 839. Chester and Judith Smith owned property in unincorporated DuPage County. Their property was located outside the Village corporate limits and was not contiguous to its boundary. Desiring to have the property rezoned as a community business district, the Smiths entered into an annexation agreement with the Village of Lisle providing for the future annexation of their property when it became contiguous to the Village. The agreement provided that the Smiths had to construct all signage or improvements of any kind on the property consistent with the Village's code. *Id.* at 837. The Smiths contracted with Action Outdoor Advertising Co. to construct a sign on their property. Upon commencement of construction, the Village served Action Outdoor with a stop-work order and later filed for injunctive relief under the terms of the agreement. *Id.* The trial court held that the agreement was unenforceable because the Smiths' property was not contiguous to the Village and "contiguity was a contingency of the annexation agreement's enforceability." *Id.* at 838. The appellate court for the second district affirmed, elaborating on the contiguity requirement:

> The fundamental notion of a municipal corporation is that of unity and continuity, not separated and segregated areas. This necessity for unity of purpose and facilities forms the very basis for the requirement of contiguity. The purpose of the contiguity requirement is to permit the *natural and gradual extension of municipal boundaries to areas which adjoin one another in a reasonably substantial physical sense.*

Id. at 839 (citations omitted).

Before the *Lisle* ruling, Illinois practitioners operated under the assumption that an annexation agreement could apply to unincorporated land whether it was contiguous to the municipality or not. This assumption stemmed from the Illinois Supreme Court's decision in *People ex rel. County of St. Clair v. City of Belleville*,[21] which involved an annexation agreement that applied to noncontiguous property.[22] In reviewing the provisions of the ordinance adopting the annexation agreement, the court found that the ordinance was unaffected by the contiguity requirement and stated: "[S]ince [the] ordinance simply adopts the agreement between the city and diocese, but does not purport to annex any property, we think its validity is not in serious question here."[23] Therefore, the *Lisle* decision was quite a shock. However, the Illinois legislature, with prodding from the Illinois Municipal League, quickly clarified the statute to provide that annexation agreements can also be applicable to land which is not contiguous.

The second paragraph of Section 11-15.1-1, also effective as of January 1, 1991, provides that "[p]roperty that is the subject of an annexation agreement adopted under this Section is subject to the ordinances, control, and jurisdiction of the municipality in all respects the same as property owned by the municipality that lies within its corporate limits."[24] This amendment is also a response to the *Lisle* decision and appears to authorize Illinois municipalities to exert full power over unincorporated property located in the county.[25]

County officials have expressed concern over this new statutory provision. Thus, the Chicago Tribune quoted Lake County Board Chairman Robert Depke: "[w]hat could happen, for example, is that the City of Highland Park could site a garbage dump in the middle of Antioch or Grant Township and nobody, in the township or the county, could do anything about it . . . ."[26] As a result of these fears,

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21. 417 N.E.2d 125 (Ill. 1981).

22. The county maintained that the ordinances adopted by the city council which approved the annexation agreement were invalid because notice was defective, the city's map was inaccurate, that the annexed territory was not contiguous to the City of Belleville, and that the territories were not contiguous when the petitions for annexation were filed with the city clerk. *Id.* at 128.

23. *Id.* at 130.

24. ILL. REV. STAT. ch. 24, para. 11-15.1-1 (1991).

25. Formerly, Illinois courts were very clear that municipalities could not exercise zoning authority over land which was in the county if the county had a zoning ordinance. *E.g.*, City of Canton v. County of Fulton, 296 N.E.2d 97 (Ill. App. Ct. 1973).

26. Robert Enstad, *State Law Spurs Fears on Zoning Control, Lake County Pushing for a Revision*, CHI. TRIB., June 4, 1991, at Lake ed., B3.

the Chicago Tribune reports that county officials may be seeking a change in the law.

The language of the amendment appears to be borrowed in part from Section 7-4-2 of the Illinois Municipal Code which provides that municipally owned property located outside corporate limits ". . . shall be subject to the ordinances, control, and jurisdiction of the municipality in all respects the same as property owned by the municipality which lies within the corporate limits thereof."[27] The difference, of course, is that the property which is the subject of an annexation agreement is not owned by a municipality. Thus, this new provision of Section 11-15.1-1 appears to be an extension of municipal jurisdiction and power even though the statute recites that: "[t]his amendatory Act of 1990 is declarative of existing law."[28]

The Illinois Municipal League argues strenuously that this amendment is essential to make it clear that a municipality may fully exercise its governmental authority over property which is the subject of an annexation agreement even if the property remains in the county. The recent decision in *County of Will v. City of Naperville*,[29] interpreting similar language in Section 7-4-2, raises a question with regard to extent to which the amendment will achieve the Municipal League's goals.

In *County of Will*, Will County challenged the City of Naperville's plan to use property the City owned in unincorporated Will County to construct a fire station, maintenance facility, water storage tanks and other structures. The City had sought and received zoning for the project from the City of Naperville. The County claimed the proposed uses were not permitted under the County zoning classification applicable to the property and filed suit to enjoin the project. The City argued that Section 7-4-2 empowered the City to zone municipally owned land located in unincorporated areas. The County countered that Section 7-4-2 was limited by Section 11-13-1 which denied municipalities the power to zone extraterritorially. Agreeing with the County's position, the Court held that the City of Naperville did not have the power to zone land which was already zoned by Will County.[30]

Therefore, the amendatory language of Section 11-15.1-1 may not have the result hoped for by the Illinois Municipal League. On

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27. Ill. Rev. Stat. ch. 24, para. 7-4-2 (1991).
28. Ill. Rev. Stat. ch 24, para. 11-15.1-1 (1991).
29. 589 N.E.2d 1090 (Ill. App. Ct. 1992).
30. *Id.* at 1092.

the other hand, the language raises considerable questions, which will undoubtedly confront Illinois legislators and courts about the scope of the powers the amendment confers on municipalities.

B. CONTENTS AND SCOPE OF AGREEMENTS

Section 11-15.1-2 of the Illinois Annexation Agreement Statute lists the matters which may be addressed in an annexation agreement. Subparagraph (a) permits the agreement to include a provision allowing a territory, subject to the agreement, to be annexed to the municipality.[31] Subparagraph (b) is the key, from a developer's point of view, because it allows "[t]he continuation in effect, or amendment, or continuation in effect as amended, of any ordinance relating to subdivision controls, zoning, official plan, and building housing and related restrictions . . ."[32] This provision allows the certainty developers seek.

Subparagraph (b) also contains a provision which safeguards against a contract zoning challenge. It states that: "any public hearing required by law to be held before the adoption of any ordinance amendment provided in such agreement shall be held prior to the execution of the agreement, and all ordinance amendments provided in such agreement shall be enacted according to law."[33] Thus, the required standard procedures and public hearings must precede approval of an annexation agreement.

Subparagraph (c) allows an annexation agreement to contain: "[a] limitation upon increases in permit fees required by the municipality."[34] Developers seek to freeze fees out of concern that fees could escalate substantially over the life of an agreement and that the development could be singled out for extraordinary fees. Freezing fees is one more way to inject some certainty into the development process.

Subparagraph (d) allows a municipality to request contributions of either land, money, or both, to the municipality and to other governmental bodies, such as school and park districts.[35] This provi-

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31. ILL. REV. STAT. ch. 24, para. 11-15.1-2(a) (1991).

32. ILL. REV. STAT. ch. 24, para. 11-15.1-2(b) (1991).

33. ILL. REV. STAT. ch. 24, para. 11-15.1-2(b) (1991).

34. ILL. REV. STAT. ch. 24, para. 11-15.1-2(c) (1991). Subparagraph (c) sets forth that an agreement may provide for "[a] limitation upon increases in permit fees required by the municipality."

35. Subparagraph (d), in whole, provides:
"(d) Contribution of either land or monies, or both, to the municipality and to other municipal corporations having jurisdiction over all or part of such land."
ILL. REV. STAT. ch. 24, para. 11-15.1-2(d) (1991).

sion may prove problematic during the annexation agreement process if a municipality has unrealistic notions about what can reasonably be requested or if the developer has unduly restrictive views of what may reasonably be sought.

An example of donations contained in an annexation agreement was discussed in *Woodsmoke Resorts, Inc. v. City of Marseilles*.[36] According to the court, the annexation agreement provided:

> Marseilles received Fifty Thousand Dollars ($50,000.00), and will receive One Million Dollars ($1,000,000.00) upon the Illinois Environmental Protection Agency (E.P.A.) issuing an operating permit. . . . If waste materials are eventually received at this landfill, Marseilles will receive at least Seven Million Dollars ($7,000,000.00), possibly Eight Million Dollars ($8,000,000.00). In addition, Marseilles may dispose of all municipally generated waste therein *gratis*.[37]

Marseilles, on the other hand, relinquished any right to establish special assessments taxing districts or taxes applicable to landfills, as well as the right to enact any regulatory ordinances concerning landfills.[38] This is just one illustration, *albeit* extreme, of the extent of donations which have been included in annexation agreements.

Subparagraph (f) allows the annexation agreement to cover "[a]ny other matter not inconsistent with the provisions of this Code, nor forbidden by law."[39] This language gives municipalities and developers wide latitude to address an almost limitless array of matters in an annexation agreement. However, developers and municipalities must not lose sight of the limitations imposed on municipal action by other laws. To do so is to run the risk that important provisions of an

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36. 529 N.E.2d 274 (Ill. App. Ct. 1988). Seeking a temporary restraining order against city approval of a sanitary landfill, the plaintiffs claimed, among other things, that the value of their property would be diminished. *Id.* at 275. Woodsmoke is a resort community which had approximately one thousand residents. The case does not involve the interpretation or validity of an annexation agreement statute, but does discuss the terms contained within the agreement in light of the plaintiffs' claims.

37. *Id.* at 275.

38. *Id.* In denying the plaintiffs the injunctive relief sought, the *Woodsmoke Resort* court held that the donations and the benefit to the City of Marseilles derived therefrom did not make the agreement fundamentally unfair. The court noted that it was not Marseilles nor the Board members who would receive the benefit but "[i]t is the community at large which stands to gain or lose from Marseilles approving or disapproving th[e] site." *Id.* at 276.

39. ILL. REV. STAT. ch. 24, para. 11-15.1-2(f) (1991).

annexation agreement could be invalidated by a court. For example, in *Maywood Proviso State Bank v. City of Oakbrook Terrace*,[40] the City of Oakbrook Terrace agreed in an annexation agreement to grant a liquor license for a period of five years. The court, citing the comprehensive state statutory scheme governing the issuance and duration of liquor licenses, held that the City was powerless to contractually issue a license not allowed under state law.[41]

On the other hand, in *Clark v. Marian Park, Inc.*,[42] the court held that an annexation agreement could include a provision requiring a property owner to place his property on the tax rolls thereby waiving exemption from real estate taxation.[43] Similarly, the *Elm Lawn Cemetery* court held that an annexation agreement could provide that if a development did not go forward, the property could be disconnected from the municipality. The municipality was obligated to disconnect according to the terms of the agreement.[44]

Typically, annexation agreements cover a multiplicity of specific matters. Commonly, numerous "whereas" clauses explain the parties' intent and the perceived benefits of the development and the agreement. A particular agreement may provide for annexation, a comprehensive plan change, zoning, the issuance of a special use permit, variations from a subdivision or zoning ordinances and amendments to various local ordinances. The agreement may specify the process and timing for the issuance of building and occupancy permits. The agreement may also provide for the financing of all or part of the development or public improvements associated with the development, including the mechanism for financing. Annexation agreements typically include a section on the type and timing of public improvements to be constructed in conjunction with the development and provide for the exercise of eminent domain power by the municipality, if necessary, for the construction of such public improvements. Finally, annexation agreements usually contain sections which: (1) lock-in existing ordinances; (2) provide for fees and donations to the municipality and to other governmental bodies; and (3) set forth the term of the agreement and the methods for enforcement.

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40. 214 N.E.2d 582 (Ill. App. Ct. 1966).

41. *Id.* at 585.

42. 400 N.E.2d 661 (Ill. App. Ct. 1980) (questioning whether the property owner was a charitable organization and thus exempt from real estate taxation).

43. *Id.* at 665.

44. Elm Lawn Cemetery Co. v. City of Northlake, 237 N.E.2d 345, 348 (Ill. App. Ct. 1968).

C. PROCEDURE

Section 11-15.1-3 sets forth the procedure for approval of an annexation agreement.[45] It closely follows the procedure for a zoning amendment. Basically, the statute requires a public hearing, usually held by a Village Board, or City Council, pursuant to published notice fifteen to thirty days in advance of the hearing. The annexation agreement may be approved by ordinance or by resolution, but approval requires a two-thirds vote. In a typical board comprised of seven members, five affirmative votes are needed for approval of an annexation agreement. This gives objectors, of course, the opportunity to defeat a development with three opposing votes.

Most municipalities notice a hearing on the annexation agreement and all required ordinances. The hearing on the annexation agreement is simply continued or deferred while hearings are held on underlying land use approvals.

D. ENFORCEMENT OF THE AGREEMENT

Section 11-15.1-4 provides that annexation agreements are binding on successor owners of the land and successor municipalities.[46] Successor owners can include lenders. In *Village of Orland Park v. First Federal Savings and Loan Association of Chicago*,[47] the lender foreclosed on the property subject to an annexation agreement at a time when fees were owed and certain property had not been dedicated as required by the annexation agreement.[48] When the Village and school district sought to enforce the agreement against the lender, the lender argued that because it had merely loaned the developer money, it was not a successor-owner, and should not be obligated to comply with the agreement. The court held that the lender was bound by the provisions of the annexation agreement and noted that whether a person is bound by an annexation agreement "cannot pivot upon how a party succeed[ed] to ownership."[49] Because the lender was the beneficiary of the zoning under the agreement, it was also bound by the burdens it imposed.

Section 11-15.1-4 provides as follows with regard to enforcement of an annexation agreement: "[a]ny party to such agreement may by civil action, mandamus, injunction or other proceeding, enforce and

45. ILL. REV. STAT. ch. 24, para. 11-15.1-3 (1991).
46. ILL. REV. STAT. ch. 24, para. 11-15.1-4 (1991).
47. 481 N.E.2d 946 (Ill. App. Ct. 1985).
48. *Id.* at 524.
49. *Id.* at 526.

compel performance of the agreement."[50] While the enforcement remedies available are broad, Section 11-15.1-5 imposes a statute of limitations for enforcement which runs in tandem with the term of annexation agreements.

Thus, there are cases which hold and the weight of authority seems to be that suit can only be brought for breach during the term of the annexation agreement. For example, in *Meegan v. Village of Tinley Park*,[51] after the annexation agreement had expired, the owner sued the Village, to enforce the zoning specified in the annexation agreement. During the term of the agreement, the Village had changed the zoning classification of the owner's property, contrary to the agreement. The court denied the plaintiff relief and held, in essence, that an annexation agreement is unenforceable beyond its expiration date.[52]

An even more restrictive statute of limitations has been imposed by the courts on actions brought by persons challenging the zoning authorized in annexation agreements. In *Echo Lake Concerned Citizens Homeowners Assn, Inc. v. Village of Lake Zurich*,[53] a homeowners' association filed suit contesting the rezoning of land under an annexation agreement four years after the Village had passed the zoning ordinance.[54] The Village argued that the suit was barred by the one year statute of limitations governing *quo warranto* actions.[55] The homeowners responded that they were challenging the zoning, not the annexation.

In reaching its decision, the court noted that the recitations in the "whereas" clauses in the annexation agreement showed an intimate link between the zoning and the annexation.[56] According to the court, the developer sought annexation, but only in exchange for certain zoning provisions. The court said: "if the pre-annexation

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50. ILL. REV. STAT. ch. 24, para. 11-15.1-4 (1991).

51. 288 N.E.2d 423 (Ill. 1972).

52. *Id.* at 426. In reaching this conclusion, the court noted that the statute did not impair the plaintiff's right to contract under the Federal Constitution because the zoning regulations were a proper exercise of state police power. *Id.* at 425. See Village of Long Grove v. Long Grove Country Club Estates, Inc., 371 N.E.2d 303 (Ill. App. Ct. 1977) for another discussion of the applicable statute of limitations for annexation agreements.

53. 386 N.E.2d 117 (Ill. App. Ct. 1979).

54. *Id.* at 118.

55. The Village argued that the applicable statute of limitations for contesting annexation of property is one year. *Id.* at 119. *See* ILL. REV. STAT. ch. 24, para. 7-1-46 (1991).

56. 386 N.E.2d at 119-20.

agreement is to be given any legal force, a successful attack on the rezoning could lead to a suit by the owners to declare the annexation void."[57] Thus, the court viewed the homeowners' suit as a collateral attack on the annexation and held that one year was the proper statute of limitations for a challenge to the zoning provided for in an annexation agreement.[58]

CONCLUSION

The Illinois Annexation Agreement Statute should be amended to include incorporated land within its purview. For all of the reasons discussed, such an amendment would benefit developers and municipalities and allow development to proceed in an orderly fashion.

57. *Id.* at 120.
58. *Id.* at 119-20.