Major Victory for Illinois FPDs: Illinois Supreme Court Affirms Fire Protection District Authority

By Mary M. LaSata Spiegel

Fire Protection Districts in Illinois are charged with the responsibility to protect residents and property from the hazards of fire, and must manage this challenge within the financial and operational constraints that Districts face. The responsibility of fire protection districts at times can differ with the rights and responsibilities of other governmental agencies. Such was the case within the Wauconda Fire Protection District where Lake County did not require the installation of a sprinkler system in a new golf course clubhouse, but the Wauconda Fire Protection District Ordinance did require a sprinkler system. In a much anticipated decision, the Supreme Court of Illinois issued its opinion in *Wauconda Fire Protection District v. Stonewall Orchards LLP and the County of Lake*, Docket No. 97317 on March 24, 2005. The Supreme Court affirmed the Appellate Court of Illinois for the Second District and held that the Wauconda Fire Protection District Ordinance requiring an operative sprinkler system in certain construction is valid and enforceable.

The case was initiated by the Wauconda Fire Protection District ("District"). The District is located in Lake and McHenry Counties in northern Illinois. In 1998, the District Board of Trustees, in conjunction with its Chief, David Dato, passed an ordinance requiring buildings that would be used for a particular purpose to have an operative fire sprinkler system installed as a part of its efforts to control fire loss and risks to residents within the District. The use classifications enumerated in the ordinance were as follows:

> "[a sprinkler system shall be installed in] new construction of buildings of the following use groups as defined by the BOCA Building Code, 1993 Edition; Assembly, Business, Education, Factory and Industrial, High Hazard, Institutional, Mercantile, Residential R1, R2, R3 and Storage." Wauconda Fire Protection District Ordinance No. 98-0-5

Lake County ("County") has adopted the BOCA National Building Code 1999. Lake County does not require a sprinkler system to be installed in new construction unless it exceeds 10,000 square feet, regardless of its intended use. The defendant, Stonewall Orchards LLP ("Stonewall") is the owner of the property and operates a golf course within the District's boundary and within unincorporated Lake County.

When Stonewall began construction of its golf course clubhouse, the original construction plans for the clubhouse contained plans for an operative sprinkler system. However, the building plans ultimately approved by the County omitted plans for the sprinkler system. At the inception of construction, the District's Deputy Fire Marshall, Joe Schwarz, notified Stonewall of the District's ordinance and supplied a copy of the ordinance to the architect and builder. Stonewall then revised its plans to include a sprinkler system pursuant to the District's ordinance. A supplemental contractor was hired, and a large portion of the sprinkler system was installed. However, prior to final completion of the system and before the system became fully operational, Stonewall was informed by the County that its code did not require the installation of the sprinkler system. The County also notified Stonewall that if the project included an operational sprinkler system, Stonewall would be required to make additional project changes before the County would issue a temporary occupancy permit. Based on this information, Stonewall ceased work on the sprinkler system, and it was not made operational. Subsequent efforts to resolve the impasse were unsuccessful.

In June 2002, as completion of the Stonewall clubhouse became imminent, the District filed suit in the Lake County Circuit Court. The District's suit asked the Court to prevent Stonewall from occupying the clubhouse and to prevent Lake County from issuing a temporary certificate of occupancy. In a later amended complaint, the District sought declaratory relief, asking that the court determine that the District has authority under the Fire Protection District Act ("Act") to adopt and enforce its own ordinances relative to fire prevention and control. The District's position was that pursuant to Section 11 of the Fire Protection District Act (70 ILCS 705/11) the District had the authority to adopt and enforce such ordinances. The specific language of the Act that became the focal point of the litigation is contained within Section 11 of the Act:

> "Except in cities having a population of 500,000 or more inhabitants and except in municipalities in which fire prevention codes have been adopted, the board of trustees has the express power to adopt and enforce fire prevention codes and standards parallel to national standards." (70 ILCS 705/11) (emphasis added)

The District was supported at the trial court by the Countryside Fire Protection District, which presented an amicus curiae brief.

The County and Stonewall argued in motions to dismiss before the trial court, that the County should be considered a "municipality" under Section 11. Therefore, the District's ordinance could not be enforced against the County or Stonewall since the County had previously adopted its own codes related to fire prevention. The trial court granted both motions and dismissed the District's complaint. The District then appealed to the Appellate Court of Illinois for the Second District. In a split opinion, the Appellate Court reversed the trial court. *Wauconda Fire Protection Dist. v. Stonewall Orchards*, 343 Ill.App. 3d 374, 797 N.E.2d 1130 (2003). The County then appealed the Appellate Court decision to the Illinois Supreme Court which accepted the appeal. Before the Illinois Supreme Court, the District was joined by the Illinois Association of Fire Protection Districts and the Northern Illinois Alliance of Fire Protection Districts. Attorney Shawn Flaherty, of Ottosen, Trevarthen, Britz, Kelly and Cooper Ltd., wrote the amicus curiae brief for these two organizations in support of the Dis-

trict's position. It was hoped by the District and the Associations that the decision of the Supreme Court would provide direction as to whether the authority of fire protection districts could be usurped by counties or other governmental units in the manner argued by Lake County here.

The earlier opinion of the Appellate Court appealed by the County held that a county is not considered a municipality under the Act. Therefore, Fire Protection Districts necessarily have concurrent jurisdiction with Counties pursuant to the Act and both the County and the District have authority to regulate the installation of a sprinkler system in the Stonewall clubhouse. While the District ordinance differs from the County code, Stonewall could and would be required to comply with both the County and District's requirements. The mere fact that the District ordinance may be more stringent than a county code is of no legal consequence and would not supersede or invalidate the District's Ordinance.

The District argued, and the Appellate Court recognized, that a fire protection district must be able to assess the risks presented within the District and must have the authority to appropriately control those risks. To find otherwise would have made the District a "toothless tiger". That is, since the District is charged with the legal duty and obligation to protect the public from the hazards of fire, it must have the enforcement authority to carry out that obligation. In this case, the Stonewall clubhouse is situated in an area of the District with no municipal water source and is not in close proximity to a responding fire station. Since the clubhouse is open to the public and used to host public and private events, the District properly determined that the operative sprinkler system was an appropriate and essential tool to protect both the members of the public who would occupy the facility and the firefighters who would respond in the event of a fire.

The Illinois Supreme Court considered the case de novo. That is, the court viewed the matter as a legal issue that the Court had not ruled on in the past and considered the question independently of the lower court rulings and findings. In its analysis, using long established rules of statutory construction, the Illinois Supreme Court rejected the County's argument that it should be considered a municipality for purposes of interpreting Section 11 of the Act. The Court stated, "This definition [the Statute on Statutes] of 'municipalities' excludes counties. Counties fall into the more general category of 'units of local government,' which, notably, includes municipalities but treats them as distinct from counties." (Illinois Supreme Court Opinion at page 10) In finding that the District has the authority to adopt and enforce such ordinances, the Illinois Supreme Court noted that in some circumstances, an owner may have to comply with more than one code or regulation. "Under this interpretation, in some unincorporated areas, both fire protection district and county fire protection regulations will apply, not simply one of the two. This potential double coverage is consistent with ensuring adequate fire protection." (Illinois Supreme Court Opinion at page 10)

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The County also argued before the Supreme Court that Section 11 of the Act is unconstitutional in that it treats different District residents differently. That is, if a resident of a District lives in a municipality whose boundaries are within a District, that resident may have different codes than a resident living in unincorporated areas. The Supreme Court rejected this argument as well. The Supreme Court indicated that such distinctions are reasonable and are related to the goal of "protecting the health, welfare, and safety of the public by providing adequate fire prevention and control services." (Illinois Supreme Court Opinion at page 13).

The final issue the Illinois Supreme Court addressed related to the District's enforcement of its ordinance. Here, the County has control over the issuance of building and occupancy permits. Therefore, the District in its lawsuit in the Circuit Court sought to prevent the County from issuing a certificate of occupancy when the County is aware that issuing a permit would allow the owner to violate the District's ordinance. However, the Illinois Supreme Court held that this relief was not appropriate in this particular case, but did indicate that it may be possible for such a case to arise, stating: "The issue of injunctive relief might be different if this case presented a situation in which a fire protection district regulation conflicted with a county regulation." (Illinois Supreme Court Opinion at page 14) However, since the Supreme Court found that issue presented by the District's case here did not present a direct conflict between the two codes, the Court did not specifically address that issue. Therefore, if a fire protection district has or adopts ordinances relative to fire prevention or suppression, care should be taken to ensure that adequate enforcement provisions are included. Then the District may seek enforcement independently.

For Illinois fire protection districts, the Supreme Court decision in the Wauconda Fire Protection District case is a landmark. For the first time, the Illinois Supreme Court has stated with crystal clarity, that fire protection districts have the authority to adopt and enforce regulations pursuant to Section 11 of the Illinois Fire Protection District Act. Fire protection district boards are charged with the duty to adopt and enforce fire prevention and protection regulations when appropriate. This case now clearly gives districts in Illinois the "teeth" to move forward and explore additional alternatives to accomplish its duty to protect the public from the hazards of fire. ■

About the Author:
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