

Chicago Daily Law Bulletin®

Volume 163, No. 204

Serving Chicago's legal community for 162 years

Zoning dispute changes speech law, protections

Developer sued residents who spoke against development; pro bono effort removes them

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First Amendment protections can bring to mind images of taking a knee on a football field, but Jenner & Block LLP's Gabriel A. Fuentes recently changed a state statute on speech in a far different venue.

Fuentes represented Park Ridge residents who had been sued for speaking at a public meeting. He was one of two Jenner lawyers who took the case pro bono.

In late 2014, the Park Ridge Planning and Zoning Commission rejected a project proposed by the development company, 400 West Talcott LLC. The company sued the zoning board in Cook County Circuit Court for improperly denying the proposal. It also sued about 20 residents who voiced opposition to the project.

At the time, the developer

asserted that an Illinois statute mandated the residents be named as defendants because the statute required all "parties of record" be sued in the review of an administrative decision, and the statute suggested the residents were included in the "parties of record."

The developer relied on the 1972 1st District Appellate Court decision in *O'Hare International Bank v. Zoning Board of Appeals*.

In that case, the appeals

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panel ruled against the developer, finding the legal complaint "was fatally defective because it did not name all parties of record as defendants," the opinion states. The panel considered the residents who spoke at the



Gabriel A. Fuentes

zoning meeting as "parties of record."

Fuentes and former Jenner associate Daniel E. Truesdell, who is now at Kirkland & Ellis LLP, offered to represent the residents pro bono in *400 W. Talcott LLC v. city of Park Ridge, et al.* They filed a motion to dismiss the case in early 2015.

The case ultimately resulted in an amendment to the Illinois statute.

"Parties of record" is now clearly defined only as members of zoning boards and the applicants who appear before them

and does not include residents who speak at zoning board meetings.

The Illinois General Assembly passed this amendment during the summer and Public Act 100-0083 goes into effect in January.

The Law Bulletin talked with Fuentes about the First Amendment issues in this case.

LB: How did you get involved in this case? Did the Park Ridge residents contact you?

GF: No, we contacted them. We read about their case in the newspaper. We immediately saw there was a First Amendment issue that needed to be vindicated. And we had a meeting with them and 11 of them agreed to our pro bono representation. They were very concerned about their First Amendment rights.

LB: To your knowledge, did anyone try to challenge this law in the past? Was this the first time that this law had been an issue in terms of restricting or limiting people's First Amendment rights?

GF: I don't know that it ever came up quite as sharply or clearly as it did here.

LB: Did you think the lawmakers were receptive to changing the law?

GF: I think they were. The changes that we helped propose became law. And, really, to see our pro bono litigation efforts result in some positive law reform to protect First Amendment rights is very gratifying.

LB: Ultimately the case was dismissed against the residents, is that right?

GF: Yes. Jenner & Block, on behalf of the residents, filed a motion to dismiss stating that to enforce the statute in the way the plaintiff wanted would be in violation of our clients' First Amendment rights. Without replying to the motion to dismiss, the plaintiff voluntarily dismissed our clients.

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