

# **Bond Case Briefs**

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## **PLANNING & ZONING - ILLINOIS**

### **Whipple v. Village of North Utica**

**Appellate Court of Illinois, Third District - April 25, 2017 - N.E.3d - 2017 IL App (3d) 150547 - 2017 WL 1506057**

Property owners brought action against village and mining company for declaratory and injunctive relief, seeking to invalidate ordinances that allowed company to operate silica sand mine within township under annexation agreement and special use permit.

The Circuit Court dismissed action. Property owners appealed.

The Appellate Court held that:

- Property owners stated cause of action for violation of their substantive due process rights;
- Annexation agreement which provided that the lawful, normal operation of a silica sand mine was not a nuisance under village ordinances, along with special use permit allowing operation of mine, did not single out owners of property near to mine for disparate treatment and thus did not violate equal protection; and
- Property owners alleged harm in sufficient specific detail to state cause of action for prospective nuisance.

Property owners stated cause of action for violation of their substantive due process rights, in action for declaratory and injunctive relief against village and mining company, seeking to invalidate ordinances that allowed company to operate silica sand mine within township under annexation agreement and special use permit, where property owners alleged that development and operation of mine near owners' homes and farms would adversely affect values of their properties, that owners would suffer harm to their health, water supply, and land, compared with any harm to company from denial of special use being inability to profit from proposed mine, that ordinances were not in harmony with community's comprehensive plan, and that community's need for use was minimal.

Annexation agreement which provided that the lawful, normal operation of a silica sand mine was not a nuisance under village ordinances, along with special use permit allowing operation of mine, did not single out owners of property near mine for disparate treatment and thus did not violate equal protection. Agreement and permit did not dispense with protection of nuisance laws and did not prohibit village from taking action if mine were operated in manner contrary to the ordinance, and legislation at issue operated in same way as to each resident of township.

Property owners alleged harm in sufficient specific detail to state cause of action for prospective nuisance, in action for injunctive relief against village and mining company challenging ordinances that allowed company to operate silica sand mine within township under annexation agreement and special use permit, even though mine was not yet in operation, where property owners alleged that there would be continuous lights and noise of up to 133 decibels, that 146 trailer loads of sand exiting operation each day would increase traffic, that operation would discharge up to 1.25 million gallons of effluent per day into local creek, and that mining would add particulate silica dust to air around site.

