

SIXTH DIVISION
May 13, 2016

No. 1-14-0552

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

WILLIE CRONIN, Individually, and)	Appeal from the
BLACKWATER VALLEY DEVELOPMENT,)	Circuit Court of
)	Cook County.
Plaintiffs-Appellants,)	
)	
v.)	13 CH 18164
)	
PALATINE VILLAGE COUNCIL, and Village)	
Council Members: TIM MILLAR, SCOTT)	
LAMERAND, JIM CLEGG, GREG SOLBERG,)	
KOLLIN KOZLOWSKI, and BRAD HELMS,)	Honorable
)	Leroy K. Martin,
Defendants-Appellees.)	Judge Presiding.

JUSTICE HALL delivered the judgment of the court.
Justice Delort concurred in the judgment. Presiding Justice Rochford specially concurred in the judgment

ORDER

HELD: The circuit court did not err in dismissing plaintiffs' complaint for administrative review.

¶ 1 Plaintiffs Willie Cronin, individually, and his company Blackwater Valley Development, appeal from an order of the circuit court dismissing their complaint for administrative review. For the reasons that follow, we affirm.

¶ 2 **BACKGROUND**

¶ 3 The following facts are taken from the record. This case involves plaintiffs' proposal to develop a seven-lot subdivision on two parcels of land Willie Cronin purchased in Palatine, Illinois. The parcels are located at 274 and 286 West Michigan Avenue in the Village of Palatine. At all relevant times for purposes of this appeal, plaintiffs did not own or control sufficient land to develop the subdivision according to their plans nor did they have the requisite zoning to develop the property.

¶ 4 In an effort to obtain the proper zoning and acquire the additional land necessary to develop the subdivision, plaintiffs sought preliminary approval of their subdivision plan from the Village of Palatine plan commission. Plaintiffs submitted a petition to the commission requesting the following: (1) the subject property be rezoned from R-1 single-family residence district to "P" planned development district; (2) approval of preliminary and final planned development plans; (3) approval of preliminary and final subdivision plats; and (4) approval of the vacation of two right-of-ways, the north 3 feet of the Michigan Avenue right-of-way and vacation of the south 33 feet of the Gilbert Street right-of-way. Plaintiffs also submitted architectural plans and site data information.

¶ 5 On March 19, 2013, the commission held a public hearing on the plaintiffs' petition. The commission considered various aspects of the proposed subdivision plan, including engineering costs and zoning changes. The commission also fielded questions and comments from the

public. Following the public hearing, the commission unanimously recommended approval of the petition to the Palatine village council.

¶ 6 On April 15, 2013, plaintiffs presented the petition to the village council for final approval of their plan to develop the subdivision. The village council voted unanimously to deny approval of the subdivision plan.

¶ 7 On May 30, 2013, plaintiffs filed a petition with the commission seeking an appeal of the village council's decision denying their subdivision plan. In a letter dated July 2, 2013, counsel for the village of Palatine informed plaintiffs' counsel that there was no administrative appeal process from decisions made by the village council. The letter pointed out that the village's director of planning and zoning had previously sent plaintiffs' counsel an email explaining that section 14.03(f) of the village code, which plaintiffs relied upon in their petition seeking an appeal, only addressed appeals from decisions made by village staff, and not appeals from decisions made by the village council, which were heard by the zoning board of appeals. The letter explained that since the decision regarding the subdivision plan was made by the village council, rather than the village staff, there was no administrative appeal process for the decision.

¶ 8 On August 2, 2013, plaintiffs filed a complaint in the circuit court of Cook County pursuant to the Administrative Review Law (735 ILCS 5/3-101, *et seq.* (West 2012)) seeking administrative review of the village council's decision denying approval of their subdivision plan. The complaint alleged that the village council's decision denying approval of the plan was either: an abuse of discretion; arbitrary, capricious and unfair; or contrary to law and fact. The complaint did not seek relief regarding the plaintiffs' unsuccessful requests to rezone the lots or to vacate the subject rights-of-way.

¶ 9 The defendants, village council and its members, moved to dismiss the complaint pursuant to sections 2-619(a)(9) and (a)(5) of the Illinois Code of Civil Procedure (Code) (735 ILCS 5/2-619(a)(9), (a)(5) (West 2012)). Section 2-619(a)(9) of the Code provides that an action may be dismissed if the claim asserted against defendant is barred by other affirmative matter avoiding the legal effect of or defeating the claim. Section 2-619(a)(5) of the Code provides for involuntary dismissal of actions not commenced within the time limited by law.

¶ 10 On January 17, 2014, the circuit court granted defendants' motion to dismiss. The court dismissed the complaint based on its finding that the village council's decision denying approval of the subdivision plan did not constitute an administrative decision, but rather a legislative decision, which was not subject to review under the administrative review law. The court further determined that even if the village council's decision was subject to administrative review, the complaint would still be dismissed on the ground that the plaintiffs' time period for seeking relief expired prior to their filing the complaint.

¶ 11 ANALYSIS

¶ 12 As an initial matter, we reject the defendants' mootness argument. "An issue is moot when its resolution could not have any practical effect on the existing controversy." *LaSalle National Bank, N.A. v. City of Lake Forest*, 297 Ill. App. 3d 36, 43 (1998).

¶ 13 Here, the defendants contend that the plaintiffs' failure to challenge the village council's decision denying their requests to rezone the lots and vacate the subject right-of-ways renders the present appeal moot because without these conditions being satisfied, it is impossible for our court to grant the relief that will allow plaintiffs to develop the subdivision. We disagree.

¶ 14 Plaintiffs' requests for rezoning and vacation of the subject right-of-ways were incorporated into and made part of the subdivision plan. As a result, these requests are

necessarily implicated in the plaintiffs' challenge to the denial of their subdivision plan and are logically encompassed in the appeal.

¶ 15 Turning to the merits of the appeal, plaintiffs claim the circuit court erred in granting the defendants' section 2-619(a)(9) motion to dismiss. Plaintiffs contend that the village council's decision to deny approval of their subdivision plan was not a legislative decision, but rather was an administrative decision, and therefore their complaint was improperly dismissed on that ground. We disagree.

¶ 16 A section 2-619(a)(9) dismissal is reviewed *de novo*. *Travis v. American Manufacturers Mutual Insurance Co.*, 335 Ill. App. 3d 1171, 1174 (2002). A motion to dismiss under this section of the Code admits the legal sufficiency of the complaint, but raises defenses or other affirmative matters that defeat the action. *Patrick Engineering, Inc. v. City of Naperville*, 2012 IL 113148, ¶ 31.

¶ 17 In this case, approval of the plaintiffs' subdivision plan would have required the village council to vacate and transfer its own street right-of-ways to the private developer plaintiffs. Whether to do so or not was entirely within the legislative discretion of the village council. Vacation of a street right-of-way requires adoption of an ordinance by a super-majority roll call vote. See 65 ILCS 5/11-91-1 (West 2012); *Wheeling Trust and Savings Bank v. City of Highland Park*, 97 Ill. App. 3d 519, 523 (1981) ("The vacation of a street by a municipality must be by ordinance"). "The enactment of an ordinance is a legislative act." *Hawthorne v. Village of Olympia Fields*, 204 Ill. 2d 243, 253 (2003).

¶ 18 The village council's decision denying approval of the subdivision plan was a legislative decision and not an administrative decision subject to review under the administrative review law. Therefore, no relief was available to plaintiffs under this law. The Administrative Review

Act "does not provide for judicial review of legislative acts of legislative bodies." *Artz v. Commercial National Bank of Peoria*, 125 Ill. App. 2d 86, 87 (1970). For these reasons, we reject plaintiffs' contention that the circuit court erred in dismissing their complaint for administrative review under section 2-619(a)(9) of the Code.

¶ 19 Plaintiffs rely on the decisions in *People ex rel. Klaeren v. Village of Lisle*, 202 Ill. 2d 164 (2002) and *Gallik v. County of Lake*, 335 Ill. App. 3d 325 (2002), to support their argument that since municipal bodies act in administrative or quasi-judicial capacities when they conduct hearings concerning the approval of special use petitions, then these bodies also act in these same capacities when they conduct hearings on the approval of subdivision plans. Plaintiffs' reliance on these decisions is misplaced.

¶ 20 In *Klaeren*, local residents opposing the proposed construction of a retail store on a subject parcel of land sought a preliminary injunction seeking to prevent their village board from voting to approve certain ordinances, rezoning, and special use permits required to develop the property. See *People ex rel. Klaeren v. Village of Lisle*, 352 Ill. App. 3d 831, 835 (2004). In support of their request for the injunction, plaintiffs alleged that their procedural due process rights were violated during a joint public hearing regarding the proposed construction when they were denied the right to cross-examine witnesses at the hearing. See *People ex rel. Klaeren v. Village of Lisle*, 316 Ill. App. 3d 770, 773-76 (2000). In response, the defendants countered that the plaintiffs' request for a preliminary injunction should be denied because they were unlikely to succeed on the merits. Defendants maintained that procedural due process did not encompass a right of cross-examination at a zoning hearing and that the village board was acting in a legislative capacity when it voted to approve the proposed development of the subject property. *Klaeren*, 316 Ill. App. 3d at 778.

¶ 21 On interlocutory appeal from the circuit court's order granting the preliminary injunction, a majority of the appellate court panel affirmed the circuit court. *Klaeren*, 316 Ill. App. 3d at 787. Our supreme court affirmed the appellate court's decision. *Klaeren*, 202 Ill. 2d 187. The court determined that zoning hearings concerning special use permits often affected the property rights of interested parties and therefore it held that "municipal bodies act in administrative or quasi-judicial capacities when those bodies conduct zoning hearings concerning a special use petition." *Id.*, at 183. The court held that "Since the joint procedure used by the village involved a special use request, it would be a denial of due process not to afford interested parties the right to cross-examine adverse witnesses." *Id.*, at 185. In *Gallik*, the supreme court's ruling in *Klaeren* was extended to hold that a county, as opposed to a municipal decision, on a special use permit was also an administrative decision subject to administrative review. *Gallik*, 335 Ill. App. 3d at 329.

¶ 22 The authority of the *Klaeren* line of cases has been significantly reduced because the General Assembly has abrogated *Klaeren's* central holding. In 2006, the Illinois legislature amended section 11-13-25(a) of the Municipal Code (65 ILCS 5/11-13-25(a) (West 2012)) to expressly respond to, and "nullify " the effect of the supreme court's decision in *Klaeren* as it pertained to county and municipal decisions concerning zoning matters. See *Dunlap v. Village of Schaumburg*, 394 Ill. App. 3d 629, 639-41 (2009).

¶ 23 Amended section 11-13-25(a) now provides in relevant part: "Any decision by the corporate authorities of any municipality, home rule or non-home rule, in regard to any petition or application for a special use, variance, rezoning, or other amendment to a zoning ordinance shall be subject to de novo judicial review as a legislative decision ***." 65 ILCS 5/11-13-25(a) (West 2012). Although section 11-13-25(a) does not mention subdivisions, the village council's

decision to deny approval of the subdivision plan was nonetheless clearly a legislative decision. Accordingly, the *Klaeren* special use analogy does not support plaintiffs' position.

¶ 24 Therefore, we find the circuit court properly dismissed plaintiffs' complaint pursuant to section 2-619(a)(9) of the Code on the ground that the village council's decision denying approval of the subdivision plan was a legislative decision rather than an administrative decision subject to review under the administrative review law.

¶ 25 Moreover, even if we agreed with plaintiffs that the village council's decision denying approval of the subdivision plan was an administrative decision, the dismissal of their complaint would still be proper because it was not timely filed. The limitations period of section 3-103 of the Administrative Review Law (735 ILCS 5/3-103 (West)) provides in relevant part that:

"Every action to review a final administrative decision shall be commenced by the filing of a complaint and the issuance of summons within 35 days from the date that a copy of the decision sought to be reviewed was served upon the party affected by the decision."

¶ 26 The filing of a complaint for administrative review within the time period specified is a jurisdictional requirement that cannot be waived. *Fredman Brothers Furniture Co. v. Department of Revenue*, 109 Ill. 2d 202, 211 (1985). Plaintiffs' request for approval of its subdivision plan was denied on April 15, 2013, at a village council meeting which plaintiffs attended. Their complaint was filed over three months later on August 2, 2013. Plaintiffs' complaint was filed well outside the 35 day period.

¶ 27 For the reasons stated above, we affirm the judgment of the circuit court of Cook County.

¶ 28 Affirmed.

¶ 29 PRESIDING JUSTICE ROCHFORD, specially concurring:

¶ 30 I concur in the decision to affirm the dismissal of this action on the statute of limitations ground only.