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SPRINGFIELD

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File No. S-294

COUNTIES:
Rezoning

Honorable Louis R. Bertani
State's Attorney
Will County
Courthouse
Joliet, Illinois 60431

Dear Sir:

I have your recent letter wherein you pose the following question:

1. Will County has had for some time a Zoning Ordinance which provides in regard to rezoning applications that if the Zoning Board of Appeals does not recommend the proposed rezoning, before the County Board can overrule the Zoning Board of Appeals recommendation there must be an affirmative vote of 3/4 of the entire Board of Supervisors.
2. Chapter 34, Section 3158 of the Illinois Revised Statutes does not provide for such a vote to override the Zoning Board of Appeals recommendation.

- "3. The case of Traders Development Corporation vs. Zoning Board, 20 Ill. App. 2d 383 appears to hold such a county requirement invalid.
- "4. We have pending before the County Board presently a factual situation wherein the Board of Appeals did not recommend, neither of the two methods provided in the Illinois Statute of filing a legal objection were followed, a majority but less than 3/4 of the Board voted to approve the rezoning.

"My question is: In view of the Illinois Statute and the cited case authority, is such a provision in the Will County Ordinance valid?"

You have inquired as to the validity of a county zoning ordinance which provides that in regard to zoning applications, if the Zoning Board of Appeals does not recommend the proposed rezoning, before the County Board can overrule the Zoning Board of Appeals' recommendation there must be an affirmative vote of three-fourths of the entire Board of Supervisors. I believe that the case of Traders Development Corporation v. Zoning Board of Appeals, 20 Ill. App. 2d 383, to which you refer, sets forth the applicable principles and answers your question. In that case the court held that a portion of a county zoning ordinance requiring a three-fourths vote by the County Board

to adopt an amendment to a zoning ordinance, if the County Zoning Board of Appeals fails to recommend approval, was in direct contravention of the County Zoning Act and was invalid. Paragraph 3158 of Chapter 34, 1969 Illinois Revised Statutes (Section 5 of AN ACT in relation to county zoning) states as follows:

"The regulations imposed and the districts created under the authority of this Act may be amended from time to time by ordinance or resolution, after the ordinance or resolution establishing same has gone into effect, but no such amendments shall be made without a hearing before the board of appeals. At least fifteen days notice of the time and place of such hearing shall be published in an official paper or a paper of general circulation in such county, and a hearing shall be held in each township or road district affected by the terms of such proposed amendment, except that for the consideration of general amendments to a County zoning ordinance, hearings may be held in the County Court House instead of in each township or road district. In case of written protest against any proposed amendment, signed and acknowledged by the owners of twenty percent of the frontage proposed to be altered, or by the owners of twenty percent of the frontage immediately adjoining or across an alley therefrom, or by the owners of twenty percent of the frontage directly opposite the frontage proposed to be altered, or in cases where the land affected lies within one mile and one-half of the limits of a zoned municipality, by the city council or president and board of trustees of the

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zoned municipality with limits nearest adjacent, filed with the county clerk, such amendment shall not be passed except by the favorable vote of three-fourths of all the members of the county board."

An ordinance cannot add to, subtract from or affect the provisions of a statute. I am, therefore, of the opinion that the provision of the Will County Zoning Ordinance to which you refer is invalid.

Very truly yours,

A T T O R N E Y G E N E R A L