JIM RYAN
ATTORNEY GENERAL
STATE OF ILLINOIS

January 31, 1996

FILE NO: 96-001

COUNTIES:
Authority to Require Building Permits for and Inspections of "Farm Residences" in Areas Zoned for Agricultural Uses or in Floodplains

Honorable Mark B. Thompson
State's Attorney, Iroquois County
Iroquois County Courthouse
Watseka, Illinois 60970

Dear Mr. Thompson:

I have your predecessor's letter wherein he inquired: 1) whether a county may require building permits and building inspections, and may impose fees with respect thereto, for farm residences built on land which is zoned for agricultural uses; 2) under what circumstances dwellings located on land zoned for agricultural uses constitute "buildings or structures used or to be used for agricultural purposes" or "farm residences"; and 3) whether a county's authority to enforce floodplain regulations includes the authority to require building permits and inspections and to collect fees for that purpose. For the reasons hereinafter stated, it is my opinion that, as a general

500 SOUTH SECOND STREET • SPRINGFIELD, ILLINOIS 62706 • 217-782-1090 • TDD 217-785-2771 • FAX 217-785-2551
100 WEST RANDOLPH STREET • CHICAGO, ILLINOIS 60601 • 312-814-3000 • TDD 312-814-7123 • FAX 312-814-3806

principle, counties may not require the issuance of building permits or the performance of building inspections, or impose fees related thereto, for construction of farm residences which are built on land which is zoned for agricultural uses. If, however, a dwelling is situated on land which is zoned for agricultural purposes and the dwelling is used solely for residential purposes by persons who are not engaged in agriculture, then the dwelling may not, in my opinion, be considered a farm residence. Lastly, it is my opinion that a county's authority to enforce floodplain regulations includes the authority to require the satisfaction of the standards established in the county's floodplain management plan; it also includes the authority to exact a fee for the purpose of defraying the cost of inspection.

It has long been established that non-home-rule counties possess only those powers which are expressly granted to them by the constitution or by statute, together with those powers which are necessarily implied therefrom to effectuate the powers which have been expressly granted. (Redmond v. Novak (1981), 86 Ill. 2d 374, 382; Heidenreich v. Ronske (1962), 26 Ill. 2d 360, 362.) It is equally well settled that agricultural land uses are subject to control only in accordance with an express statutory grant. County of Kendall v. Aurora National

Bank Trust No. 1107 (1988), 170 Ill. App. 3d 212, appeal denied, 122 Ill. 2d 576 (1988); 1991 Ill. Att'y Gen. Op. 38; 1978 Ill. Att'y Gen. Op. 146.

The first question posed concerns whether a county may require that a person obtain a building permit and submit to building inspections, and pay a fee related thereto, with respect to the construction of a farm residence on land which is zoned for agricultural uses. Section 5-1063 of the Counties Code (55 ILCS 5/5-1063 (West 1994)) authorizes counties to establish reasonable rules and regulations for buildings and structures:

> "For the purpose of promoting and safeguarding the public health, safety, comfort and welfare, a county board may prescribe by resolution or ordinance reasonable rules and regulations (a) governing the construction and alteration of all buildings, structures and camps or parks accommodating persons in house trailers, house cars, cabins or tents and parts and appurtenances thereof and governing the maintenance thereof in a condition reasonably safe from hazards of fire, explosion, collapse, electrocution, flooding, asphyxiation, contagion and the spread of infectious disease, where such buildings, structures and camps or parks are located outside the limits of cities, villages and incorporated towns, but excluding those for agricultural purposes on farms including farm residences, but any such resolution or ordinance shall be subject to any rule or regulation heretofore or hereafter adopted by the State Fire Marshal pursuant to "An Act to regulate the storage, transportation, sale and use of gasoline and volatile oils", approved June 28, 1919, as amended; * * *
>
> * * * "
>
> (Emphasis added.)

In construing statutes, the primary object is to ascertain and give effect to the intent of the General Assembly. (People v. Jameson (1994), 162 Ill. 2d 282, 287.) Legislative intent is best evidenced by the language used in the statute. (Illinois Graphics Co. v. Nickum (1994), 159 Ill. 2d 469, 479.) Where the language of a statute is clear and unambiguous, it should be given effect as written. Solich v. George and Anna Portes Cancer Prevention Ctr. (1994), 158 Ill. 2d 76, 81.

Under the language quoted above, it is clear that counties have been granted the general authority to establish reasonable rules and regulations governing the construction and alteration of buildings and structures located outside the limits of municipalities. It is equally clear, however, that the General Assembly has specifically excluded "farm residences" from the county's grant of regulatory authority. Consequently, counties may not require farm residences to satisfy building rules and regulations adopted under the provisions of section 5-1063 of the Counties Code.

Similarly, section 5-12001 of the Counties Code (55 ILCS 5/5-12001 (West 1994)) grants to counties the authority to regulate buildings and structures:

> "Authority to regulate and restrict location and use of structures. For the purpose of promoting the public health, safety, morals, comfort and general welfare, conserving the values of property throughout the county, lessening or avoiding congestion in the public streets and highways, and

lessening or avoiding the hazards to persons and damage to property resulting from the accumulation or runoff of storm or flood waters, the county board or board of county commissioners, as the case may be, of each county, shall have the power to regulate and restrict the location and use of buildings, structures and land for trade, industry, residence and other uses which may be specified by such board, * * * to divide the entire county outside the limits of such cities, villages and incorporated towns into districts of such number, shape, area and of such different classes, according to the use of land and buildings, the intensity of such use (including height of buildings and structures and surrounding open space) and other classification as may be deemed best suited to carry out the purposes of this Division; to prohibit uses, buildings or structures incompatible with the character of such districts respectively * * * Provided, that permits with respect to the erection, maintenance, repair, alteration, remodeling or extension of buildings or structures used or to be used for agricultural purposes shall be issued free of any charge. * * *

The powers by this Division given shall not be exercised so as to deprive the owner of any existing property of its use or maintenance for the purpose to which it is then lawfully devoted; nor shall they be exercised so as to impose regulations or require permits with respect to land used or to be used for agricultural purposes, other than parcels of land consisting of less than 5 acres from which $1,000 or less of agricultural products were sold in any calendar year in counties with a population between 300,000 and 400,000 or in counties contiguous to a county with a population between 300,000 and 400,000, and other than parcels of land consisting of less than 5 acres in counties with a population in excess of 400,000, or with respect to the erection, maintenance, repair, alteration, remodeling or extension of buildings or structures used or to be used for agricultural purposes upon

> such land except that such buildings or structures for agricultural purposes may be required to conform to building or set back lines; * * * As used in this Act, "agricultural purposes" do not include the extraction of sand, gravel or limestone, and such activities may be regulated by county zoning ordinance even when such activities are related to an agricultural purpose.
>
> * * * In this Division, "agricultural purposes" include, without limitation, the growing, developing, processing, conditioning, or selling of hybrid seed corn, seed beans, seed oats, or other farm seeds." (Emphasis added.)

In construing the language quoted immediately above, the courts have indicated that the county has no zoning authority to require building or special use permits with respect to property which is used for an agricultural purpose (Tuftee v. County of Kane (1979), 76 Ill. App. 3d 128, 133), or to restrain the agricultural use of property other than by requiring that any structures or buildings on the land conform to building or set back lines. (County of Kendall v. Aurora National Bank, 170 Ill. App. 3d at 216; Tuftee v. County of Kane, 76 Ill. App. 3d at 133; County of Lake v. Cushman (1976), 40 Ill. App. 3d 1045, 1047; County of Grundy v. Soil Enrichment Materials Corp. (1973), 9 Ill. App. 3d 746, 751.) Moreover, at least one Illinois court has concluded that where a structure is used as a dwelling by persons who are engaged full-time in agricultural pursuits, then

the structure constitutes a farm residence for agricultural purposes. County of DeKalb v. Vidmar (1993), 251 Ill. App. 3d 419, 424.

Based upon the foregoing, it is my opinion that non-home-rule counties are not authorized to require building permits or to conduct building inspections of farm residences located on territory which is zoned for agricultural uses, other than to enforce building and set back line requirements, and except to the extent that such residences are constructed in floodplains in certain counties, as discussed below.

The second question posed concerns the circumstances in which a dwelling located on land which is zoned for agricultural uses constitutes a "farm residence" or a "building or structure used or to be used for agricultural purposes", as those terms are respectively used in sections 5-1063 and 5-12001 of the Counties Code. In People v. Husler (1975), 34 Ill. App. 3d 977, the defendant was prosecuted for violation of a county ordinance which prohibited permanently parking mobile homes and using them for dwelling purposes on land other than in trailer parks. The defendant, citing section 1 of the County Zoning Act (Ill. Rev. Stat. 1973, ch. 34, par. 3151), the precursor to section 5-12001 of the Counties Code, contended that because his property was

zoned for agricultural purposes, the county lacked authority to prohibit the use of a mobile home on his property. In rejecting the defendant's contention, the court noted, at page 979:

> " * * *
>
> * * * as the statute makes clear, the county's power to require permits for buildings on agricultural land is only prohibited when the buildings are used for agricultural purposes. * * *
>
> * * * "

Similarly, in opinion No. S-1109, issued June 15, 1976 (1976 Ill. Att'y Gen. Op. 211), Attorney General Scott was asked to determine whether counties had the authority to require building permits and to charge fees for such permits for dwellings situated on land zoned for agricultural purposes where the dwellings were occupied by persons who were not engaged in agricultural pursuits. In reaching his conclusion that counties possess the authority to require permits for the erection, maintenance, repair, alteration, remodeling or extension of dwellings which are occupied by persons who are not engaged in agriculture and are used solely for residential purposes, my predecessor noted "* * * that where a dwelling, even though situated on land zoned for agricultural purposes, is used only for residential purposes by persons not engaged in agriculture the county has authority to require a permit." (1976 Ill. Att'y Gen. Op. 211, 212.)

In contrast, in County of DeKalb v. Vidmar (1993), 251 Ill. App. 3d 419, the court was asked to determine whether a mobile home which was used as a residence by persons engaged full-time in the raising of various types of animals constituted a farm residence or structure used for agricultural purposes. In reaching its conclusion "* * * that the mobile homes constituted a 'farm residence' for 'agricultural purposes'," the court noted that "[w]e do not agree with the County that residing on a farm is not a 'farm residence' or that living in a structure to promote a full-time business of farming is not an 'agricultural purpose'." County of DeKalb v. Vidmar, 251 Ill. App. 3d at 24.

Based upon these authorities, it is my opinion that if a dwelling is situated on land which is zoned for agricultural purposes but the dwelling is used solely for residential purposes by persons who are not engaged in agriculture, then the dwelling is not a farm residence. Whether a particular dwelling is in fact occupied by persons engaged in agriculture or used solely for residential purposes by persons not engaged in agriculture is a question of fact to be determined based upon the surrounding circumstances. I would caution, however, that in the absence of an express statutory provision otherwise providing, counties may not establish minimum acreage requirements to which it will limit the granting of the agricultural exemption from zoning regulation. See, Tuftee v. County of Kane, 76 Ill. App. 3d at 133; County of Lake v. Cushman, 40 Ill. App. 3d at 1047.

Lastly, you have inquired whether a county's authority to enforce floodplain regulations includes the authority to require building permits and building inspections and to charge fees in this regard. In opinion No. 91-019, issued April 25, 1991 (1991 Ill. Att'y Gen. Op. 38), Attorney General Burris was asked whether counties possessed the authority to impose design standards on, or to prohibit or regulate the construction of, agricultural buildings and structures on land used for agricultural purposes, as required by Federal regulations for all "communities" participating in the National Flood Insurance Program. (See, 42 U.S.C. § 4102; 44 C.F.R. § 60.1 (1994).) In reaching his conclusion that counties were precluded from regulating agricultural structures on land used for agricultural purposes, my predecessor noted that, in order to satisfy the Federal regulations for continued participation in the National Flood Insurance Program, the delegation of additional statutory authority to the counties of Illinois would be necessary to authorize the adoption of appropriate regulations.

Subsequent to the issuance of that opinion, and with the apparent intent to prevent the suspension of several Illinois counties from participation in the National Flood Insurance Program, the General Assembly added section 5-40001 of the Counties Code (55 ILCS 5/5-40001 (West 1994)), which provides:

> "Counties are authorized to adopt and enforce floodplain regulations consistent with Federal Emergency Management Agency

> regulations that implement the National Flood Insurance Act of 1968, as amended. For the purposes of preventing flood damages and preserving the flood carrying capacity of streams, floodplain regulations shall apply to all buildings, structures, construction, excavation, and filling in the floodplain whether or not the land, buildings, structures, construction, excavation, or filling are for agricultural purposes. The Department of Transportation shall prepare manuals and model ordinances and shall advise counties on achieving floodplain regulation purposes without unnecessarily interfering with land uses." (Emphasis added.)

Under the language of section 5-40001, the General Assembly has expressly granted counties the authority to adopt and to enforce floodplain regulations which are consistent with the Federal requirements in order to continue to qualify for the National Flood Insurance Program. Therefore, it is necessary to examine the Federal Emergency Management Agency regulations (44 C.F.R. § 60.1 et seq. (1994)) to determine the extent of the authority granted to counties.

In reviewing the pertinent Federal regulations, it is clear that all "communities" (a term which includes counties) which desire to participate in the National Flood Insurance Program must adopt floodplain management regulations which are consistent with the applicable Federal criteria (44 C.F.R. § 60.1(a)(1994)); these regulations must be legally enforceable, must apply uniformly throughout the community to all privately and publicly owned land and must take precedence over any less restrictive conflicting local laws, ordinances or codes (44

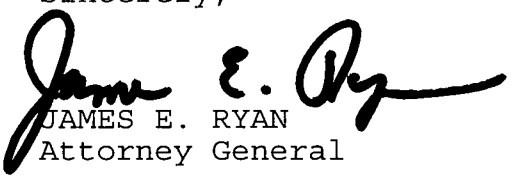
C.F.R. § 60.1(b)(1994)). In addition, a floodplain management plan for a flood-prone community must satisfy prescribed minimum standards. (44 C.F.R. 60.2 (1994).) In this regard, those persons proposing construction or other developments in a community must generally satisfy the standards established in the community's floodplain management plan (44 C.F.R. § 60.3 (1994)). The minimum standards for a floodplain management plan include, inter alia, requiring permits for all proposed construction, reviewing all permit applications to determine whether proposed building sites will be reasonably safe from flooding and ensuring that new construction in flood-prone areas satisfies established building and design standards. (44 C.F.R. § 60.3(a)(1), (a)(2), (a)(3), (b)(2), (c)(1), (d)(1) and (e)(1)(1994).)

Based upon the language of section 5-40001 of the Counties Code and the pertinent Federal law and regulations, it is my opinion that counties which participate in the National Flood Insurance Program must adopt and enforce specific standards for building and construction projects, which includes requiring building permits. Further, it is my opinion that implicit within this grant of power is the authority to inspect buildings and structures to ensure compliance with the building and construction standards which are adopted.

With regard to the imposition of a fee for performing an inspection, I note that it is generally recognized that where units of local government have been given the power to regulate a

particular subject matter, such power also includes the authority to exact a fee for the purpose of defraying all or part of the cost of regulation or inspection. (Father Basil's Lodge, Inc. v. City of Chicago (1946), 393 Ill. 238, 253; Larson v. City of Rockford (1939), 371 Ill. 441, 444; Oak Park Trust & Sav. Bank v. Village of Mount Prospect (1989), 181 Ill. App. 3d 10, 15-16; 1977 Ill. Att'y Gen. Op. 203, 205.) Therefore, it is my opinion that a county is authorized to collect reasonable fees for inspections and the issuance of permits to ensure compliance with the county's floodplain management plan.

Sincerely,



JAMES E. RYAN
Attorney General