

12/17/2021

Kurt:

I've reviewed the Walker letter. Even assuming, for the sake of argument, that everything he says about the problems and deficiencies of the manner in which the ordinance was passed in 2011 is true, IT DOES NOT MATTER. The law could not be clearer: once the rezoning has been codified, after 3 years the codification is presumptively valid and cannot be challenged. That is the case here.

This presents a very good case study as to why this law is necessary. Mr. Walker's initial position set the staff scrambling to see if there had been any procedural defects in the record in the manner in which the case is handled over ten years ago. Raising the issue the way he did seemed to create a burden of proof on the part of the City to show it had done so. Imagine if the rezoning had happened twenty years ago. Or thirty. Would that mean, then, that for 10, 20 or 30 years the City Code provision that everyone had been relying on was invalid unless it could show indisputably in its records that all "t"s were crossed and "l"s dotted?

The law deals with the problem sensibly. In the first three years after codification, the kinds of issues raised by Mr. Walker can be dealt with. What is created is a **rebuttable** presumption of validity. The burden would be on Mr. Walker, under these facts, to prove the City failed to follow its own procedures or that of state law. If he did so, that could serve to invalidate the ordinance.

Once three years have passed, however, the "window of opportunity" is gone and the presumption of validity becomes **irrebuttable**.

What this means here is that it doesn't matter whether Mr. Walker's arguments of what was done ten years ago are right or wrong, only whether he raised his objections soon enough. He did not.

From: Frederic Knaak fknaak@klaw.us