No. 127149

IN THE SUPREME COURT OF ILLINOIS

BRIAN J. STRAUSS, individually and d/b/a 1572 North Milwaukee Avenue Building Corporation Plaintiff-Appellant, v. CITY OF CHICAGO, Defendant-Appellee.	)	Appeal from the Illinois Appellate Court, First District, No. 1-19-1977 There heard on appeal from the Circuit Court of Cook County, Chancery Division, No. 2018-CH-00256, Hon. David B. Atkins, Judge Presiding

AMICUS CURIAE BRIEF OF STATION PLACE TOWNHOUSE CONDOMINIUM ASSOCIATION AND PRAIRIE STREET TOWNHOMES CONDOMINIUM ASSOCIATION IN SUPPORT OF PLAINTIFF-APPELLANT

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E-FILED
11/10/2021 11:38 AM
Carolyn Taft Grosboll
SUPREME COURT CLERK

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INTEREST OF *AMICUS CURIAE*

This Court's review of Strauss v. City of Chicago, 2021 Ill. App. 191977 (Ill. App. Ct. 2021) ("Strauss") is of great interest to the Amici.

Amici focuses on one of the issues as presented in Strauss: whether plaintiff's allegations in their second amended complaint against defendant City of Chicago can state a claim that the challenged zoning ordinance violates substantive due process under the Illinois Constitution. See, Ill. Const. 1970, art. I, § 2.

We urge reversal of the dismissal of this claim under Section 2-615 of the Code of Civil Procedure and urge its remand for further proceedings. See, 735 ILCS 5/2-615. Strauss has properly pled a substantive due process constitutional claim. The municipality (in this instance, the City of Chicago) needs to answer the complaint.

By dismissing the case without getting beyond the complaint stage of the pleadings, the case ends before the parties are at issue. Thus, despite statutory and long-standing case law entitling him to it, Strauss never gets a *de novo* evidentiary trial on the specific facts and circumstances relating to this property and this zoning ordinance, as alleged in his complaint. The local government prevails without ever answering those allegations at all. Amici urge that that this handling to challenge to a zoning ordinance be reversed.

Otherwise, Strauss completely undermines checks and balances. Under the analysis as set forth in Strauss, no plaintiff could allege sufficient facts to proceed further to challenge a zoning ordinance as being unconstitutional. The result here ends up being no court role in this process, and more power to the local government. Amici urge that Strauss be reversed, and the longstanding objective standard for such reviews be restored.

This Court's reversal provides the opportunity for this Court to give clear direction regarding the applicable standard for reviewing a local government's zoning decision. Amici urge that the subjective standard as set forth in Strauss be reversed.

The Appellant, Brian J. Strauss, is challenging a City of Chicago zoning ordinance, individually and in his capacity doing business as the sole owner of a corporation that owns the building. By rezoning his property, Strauss alleges that the ordinance passed by the City of Chicago violates his substantive due process rights.

The City of Chicago ordinance in Strauss "downzones" his property such that permissible uses become impermissible uses. Strauss alleges that this is to his detriment (fewer allowed categories of businesses and building uses in the building, and fewer allowed options for the types of commercial or retail tenants that would be permitted to occupy the building). He seeks judicial review of the merits of his case as to whether the legal result is that the ordinance relating to his property is void. It is up to a judge to determine and weigh the facts. In any event, Strauss deserves his day in court.

Amici Station Place Townhouse Condominium Association and Prairie Street Townhomes Condominium Association (collectively "Station Place") would like to present to this Court the perspective so-called "neighbor challenges". This is an opposite perspective from Strauss but is the most common type of case. These are plaintiffs who contend that zoning changes to other properties are to the detriment of their property.

A review of the case law reveals that zoning court challenges filed by neighboring landowners are the most common scenario in zoning cases. Neighbors are typically litigants who claim that an ordinance that rezones a neighboring property (adjacent or nearby) violates their substantive due process rights by turning what would be an

impermissible use and making that use permissible. Just like Strauss, since these ordinances are fact-specific, these plaintiffs' challenges against them are fact-specific as well.

It should be noted that whereas Strauss is a lawsuit filed by the property owner (an atypical fact pattern), every case that were cited in Strauss are actually "neighbor challenge" cases. This more typical case was presented to this Court in Klaeren v. Village of Lisle, 202 Ill.2d 164, 781 N.E.2d 223 (2002). This was a highly public "neighbor" dispute over rezoning to facilitate construction of a proposed Meijer store. ("Klaeren").

These neighbor plaintiffs are impacted by Strauss too. To emphasize, whether rezoning in dispute is the property itself (Strauss) or its impacts on a neighboring property (Station Place), the same analysis and standards should apply in determining its legality.

Station Place is in such a "neighbor" litigation. Specifically, there is a dispute between neighboring property owners and the Village of Glenview ("Village" or "Glenview"). In 2020, the Village passed an ordinance in which Village owned parcels were rezoned. The Village did this to facilitate its sale of its publicly owned land to a private developer. This developer had proposed to construct a taller and more dense building than existing zoning otherwise would have allowed to be built as a matter of legal right at this site.

Through rezoning of this neighboring property, just like Strauss, the plaintiffs in Station Place allege that the Glenview zoning ordinance negatively impacts upon their properties. Like Strauss, the plaintiffs in Station Place are seeking judicial review of this zoning decision, claiming that the Glenview zoning ordinance violates their substantive due process rights under the Illinois Constitution. They deserve their day in court, too.

Station Place filed a lawsuit against the Village seeking a court hearing on the legality of this rezoning. Like Strauss, they are exercising a right expressly afforded to them by Section 11-13-25 of the Municipal Code. See, 65 ILCS 5/11-13-25.

Amici interest arises because with Strauss being their precedent, the Village of Glenview was successful at getting Strauss applied against them. On August 12, 2021, this count in the Station Place complaint was dismissed on the pleadings under Section 2-615 on the same grounds as Strauss.

On September 10, 2021, Station Place filed an appeal, on the dismissal of this count (and 4 others). See, Station Place Townhouse Condo. Assoc. et. al. v. The Village of Glenview, 1-21-1131. No briefing or record has been prepared at this point. However, Strauss looms large over Station Place, so the outcome of this case impacts all such lower court litigation, now and in the future.

Strauss is an outlier among recent cases for the reasons as stated in **Part V**. of the Argument. Dismissal at this point in Strauss via a section 2–615 motion on the pleadings was contrary to long-applied precedent and was in error. See, e.g., Rodriguez v. Henderson, 217 Ill.App.3d 1024, 578 N.E.2d 57 (1st Dist. 1991), Zeitz v. Village of Glenview, 227 Ill. App.3d 891, 592 N.E.2d 384 (1st Dist. 1992).

Thus, this Court's allowance of the Petition for Leave to Appeal by this Court on September 29, 2021, directly impacting upon Station Place.

Like City of Chicago in Strauss, the dismissal meant that the Village of Glenview did not have to answer the plaintiff's complaint. Due to Strauss, Station Place was not afforded a court hearing as provided for under Section 11-13-25 of the Municipal Code on the merits of its challenge to Glenview's rezoning ordinance. The plaintiffs were cut off

their opportunity to present objective evidence to and weighed by a trial court under the LaSalle Factors.

Dismissal on the pleadings, without the municipality even answering the complaint, meant that the Station Place will never get its case to the point of holding a hearing on the "LaSalle factors" first set enunciated by this Court nearly 65 years ago.

Instead, following Strauss, the trial court looked at the allegations of the complaint itself to make determination if there was a rational basis for the zoning ordinance. Station Place's substantive due process claim was dismissed. Glenview did not answer the complaint and the parties were not at issue. Just like Strauss, Station Place did not make it past the initial pleadings. Through reversal of Strauss, Amici urge that use of such a subjective standard be found to be contrary to law.

Under the analysis as set forth in Strauss, no complaint would ever be considered legally sufficient. Since the complaint would have already been dismissed, an "*as-applied*" challenge using the LaSalle Factors would never be reached. Despite a clearly set forth statutory right to a hearing in Section 11-13-25 of the Municipal Code (65 ILCS 5/11-13-25), there ends up being no court remedy at all. Thus, what happens here with this Court in Strauss directly impacts on Station Place.

Amici urge reversal and want to offer a perspective which differs from Strauss: the "neighbor" case. The Strauss Court failed to construe the allegations of the complaint in the light most favorable to the plaintiff and failed to take all well-pleaded facts and all reasonable inferences that may be drawn from those facts as true. See, Napleton v. Village of Hinsdale, 229 Ill.2d 296, 891 N.E.2d 839 (Ill. 2008) ("Napleton"). A claim should not

be dismissed pursuant to section 2-615 unless no set of facts can be proved which would entitle the plaintiff to recover. Id.

By setting forth the "LaSalle Factors" in its complaint, long applied by Illinois courts, the plaintiff in Strauss has properly pled such a challenge to the City of Chicago's zoning decision. Once that happens, the municipality needs to answer. Ultimately, the trial court will then analyze the evidence to presented at the trial and then decide upon the plaintiff's "*as-applied*" challenge to the zoning ordinance. Strauss was erroneously dismissed.

Reversal would restore the law to where it has been for nearly 65 years for "*as applied*" zoning ordinance challenges as set forth in LaSalle National Bank of Chicago v. County of Cook, 12 Ill.2d 40, 145 N.E.2d 65 (1957) ("LaSalle"), itself derived from many earlier years of substantive due process zoning claims as litigated in the Illinois courts.

It would also carry out the legislative intent that there be judicial review of decisions by corporate authorities as set forth in P.A. 94-1027. Per that statute, such local zoning actions are subject to *de novo* review, a due process right to all stages of the decision-making and review of all zoning decisions (if a 90-day statute of limitation is met within which time an aggrieved party may bring a complaint in circuit court against the listed forms of zoning relief), as expressly added by the General Assembly. See, P.A. 94-1027, § 15, eff. July 14, 2006. Klaeren v. Village of Lisle, 202 Ill.2d 164, 781 N.E.2d 223 (2002). The whole intent of this statute is that if the local government does not provide due process to local property owners, the courts will.

When a local zoning ordinance is being challenged, the same legal standards for judicial review must apply. These lawsuits are intended to subject the municipalities to checks and balances. Only the courts can provide the objective oversight that both Strauss and Station Place allege were lacking in their instances.

BACKGROUND

I. General Interest.

Among the most important powers that may be exercised by municipalities are contained in Division 13 of the Illinois Municipal Code: zoning powers. See, 65 ILCS 5/11-13-1 et seq. Zoning is designed to promote the community's public health, safety, comfort, morals, and welfare. See, 65 ILCS 5/11-13-1.

There is no one-size-fits-all model for land use regulation and control. Small towns in the rural parts of the state, urban areas like the City of Chicago, and suburban areas like the Village of Glenview will all have differing priorities, as expressed in their zoning.

Zoning dramatically affects a municipality's fiscal structure, economic development and growth, and the character of the community. As such, zoning codes are often the subject of litigation on the validity of their **application** to individual parcels.

These are "as-applied" challenges: constitutionality of a zoning ordinance as applied to a particular parcel of property. The context, the facts, and the plaintiff's surrounding circumstances are relevant.

The significant difference between an "as applied" challenge and "facial" zoning challenges were made clear by this Court in Napleton v. Village of Hinsdale, 229 Ill. 2d 296, 891 N.E.2d 839 (2008).

Napleton concerned the standards to evaluate a facial challenge to zoning ordinance. See, Napleton, 229 Ill. 2d at 316-19. Per Napleton, the rational-basis test is to be applied "facial" zoning challenges. This is a very difficult standard to successfully challenge an ordinance. This requires pleading that the statute is invalid on its face in any context.

In contrast, for "as-applied" challenges, this Court has long established a set of eight factors to be considered when reaching zoning decisions, collectively known as the "LaSalle Factors" (named after the original case from this Court where the first six factors were first enunciated). See, La Salle National Bank v. County of Cook, 12 Ill.2d 40, 145 N.E.2d 65 (1957); Sinclair Pipe Line Co. v. Village of Richton Park, 19 Ill.2d 370, 167 N.E.2d 406 (1960). [1]

In Napleton, this Court reaffirmed that "*as applied*" challenges to zoning ordinances would continue to be evaluated under these LaSalle factors. This requires pleading that the statute is invalid based on how it was applied or what impacts it had.

Illinois courts have long examined and attempted to balance these LaSalle Factors to determine whether the zoning in question is fair to the owner of the subject property, owners of surrounding properties, and the public. No single factor is controlling, and each case must be decided on its own facts.

[1] The Strauss Court references these as being the "La Salle/Sinclair factors", and some cases do as well. "LaSalle Factors" (named after the original case where the first six factors were first enunciated) and "LaSalle-Sinclair Factors" both refer to the same thing: those 6 original factors, plus 2 others added in Sinclair. For purposes of this brief, we will reference them as the "LaSalle Factors".

In People ex rel. Klaeren v. Village of Lisle, 202 Ill. 2d 164, 176, 781 N.E.2d 223 (2002), this Court made clear the due process rights of neighboring landowners to pursue allegations of a diminution in value and a loss of quiet enjoyment of property in the court system. Klaeren involved citizens' claims that they were treated unfairly by the Village during a public hearing at which an application for a Meijer store was approved. Klaeren held that the public hearing improper denied them procedural due process. Klaeren, 202 Ill. 2d at 187.

After Klaeren, in 2006, the General Assembly expressly set forth that right in the Municipal Code by adding Section 11-13-25, which provides as follows:

> (a) Any special use, variance, rezoning, or other amendment to a zoning ordinance adopted by the corporate authorities of any municipality, home rule or non-home rule, shall be subject to ***de novo*** judicial review as a legislative decision, regardless of whether the process of its adoption is considered administrative for other purposes. Any action seeking the judicial review of such decision shall be commenced not later than 90 days after the date of the decision.
>
> (b) The principles of substantive and procedural due process apply at all stages of the decision-making and review of all zoning decisions. See, 65 ILCS 5/11-13-25 (emphasis added).

Section (b) acts as a legislative announcement adopting the heart of the Klaeren decision, that procedural and substantive due process must be accorded to all parties to a zoning proceeding.

Under Section 11-13-25, all parties in a zoning lawsuit put on their respective presentations and may include new information or evidence that was not raised at the public hearing (if there was one).

The circuit court then makes the ultimate decision as to whether the zoning decision was appropriately made in accordance with all the evidence presented, the municipal zoning ordinances, and other provisions of state and, in some instances, federal law.

This *de novo* judicial review means that a court's review and ultimate decision is based on a record established at trial. Under Section 11-13-25, a challenge to an adverse zoning decision of a municipality is brought in circuit court as if there never was a public hearing.

Any previously created record is inapplicable to the court proceedings. This eliminates the Klaeren issues brought about by how the proceedings as conducted by the municipality. Thus, irrespective of what happened at the municipality level, a court is available to review that decision. This is a clearly defined court role.

Public Act 94-1027 covers all local governments too, not just municipalities. The General Assembly gave the court a role in ensuring due process over zoning decisions made by "*corporate authorities of any municipality*" (Chapter 65. Municipalities, 65 ILCS 5/11-13-25), "*county board of any county*" (Chapter 55. Counties, 55 ILCS 5/5-12012.1), and "*township board of any township*" (Chapter 60. Townships, 60 ILCS 1/110-50.1).

II. Specific Interest.

The Village of Glenview ("Village" or "Glenview") owns several parcels of land at 1850 Glenview Road in Glenview that it seeks to sell to a private developer. The private developer proposes to build a mixed-use apartment building.

Amici, Station Place Townhouse Condominium Association ("Station Place") and Prairie Street Townhomes Condominium Association, are not-for-profit corporations, who manage properties governed by the Condominium Property Act. See, 765 ILCS 605.

Station Place contains 17 residential condominium units in 4 buildings. Prairie Street contains 6 residential condominium units in a single building. These condominiums adjoin the above parcels of land that are owned by the Village.

Instead of doing a proper zoning proceeding of the 1850 Glenview Road property, a process the Village completely controlled, the Station Place alleges that the Village elected to forego doing it altogether.

On March 3, 2020, the Village rezoned its land at 1850 Glenview Road to facilitate the construction of what plaintiffs allege is an ultra-dense, massive apartment complex. See, Village of Glenview Ordinance 6334. This ordinance was the culmination of contentious public hearings.

The General Assembly contemplated that scenario when it passed Public Act 94-1027 in response to this Court's decision in Klaeren. Thus, irrespective of what happened at the municipality level in reaching this rezoning decision, Section 11-13-25 of the Municipal Code should have afforded Station Place with *de novo* judicial review, if they elected to do so. The principles of substantive due process require that the LaSalle Factors be considered such review of zoning decisions. See, 65 ILCS 5/11-13-25.

In one of its counts, in Station Place, the plaintiffs did, in fact, avail themselves of this statutorily provided remedy via the court system, by filing a complaint that seeks a hearing on the validity of the ordinance.

On June 1, 2020, Station Place and Prairie Street and 5 individual unit property owners at these condominium associations as plaintiffs filed a multi-count lawsuit against the Village of Glenview, seeking declaratory judgment, injunctive and other relief pursuant to Section 2-701 of the Code of Civil Procedure (735 ILCS 5/2-701) and Section 11-13-25 of the Municipal Code (65 ILCS 5/11-13-25). See, Station Place Townhouse Condominium Association et. al. v. Village of Glenview, 20-CH-04400 (Honorable Alison C. Conlon, Circuit Court of Cook County, Chancery Division) ("Station Place").

Station Place presents a challenge to this local rezoning ordinance passed by the Village, relative to property owned by the Village.

The Station Place plaintiffs are neighboring property associations and owners. In their complaint, they allege that they are negatively impacted by Village's rezoning of its property, via the Village's ordinance. They allege that this impact results from the allowance of the construction of a taller and more dense building than zoning would have allowed to be built as a matter of legal right at this site.

The complaint was amended twice, but one of plaintiff's causes of action as alleged in its complaint is "*COUNT IV – DENIAL OF SUBSTANTIVE DUE PROCESS*": that Glenview's zoning ordinance violates substantive due process under the Illinois Constitution. See, Ill. Const. 1970, art. I, § 2.

The plaintiff alleged that this zoning decision was made without considering any of the factors established by the Illinois courts, the LaSalle Factors: (a). Uses and zoning of nearby property; (b). Diminution of property values; (c-d). Promotion of public welfare,

and gain-loss balance; (e-f). Suitability as zoned, and length of time vacant; (g-h). Existence of plan, and conformity with plan; and (i). Need for development.

The plaintiffs alleged in their complaint that if those LaSalle Factors are so balanced, the existing zoning would be found to be fair to all parties: the owner of the subject property (the Village), the owners of surrounding properties (the Plaintiffs), and the public. They allege that the evidence would show that the ordinance changing zoning was arbitrary and bore no real and substantial relation to the public health, safety, morals, comfort, and welfare of the public as applied to plaintiff's property. Therefore, the property could not legally be rezoned.

On **August 12, 2021**, Judge Conlon dismissed this count in the Plaintiffs' Second Verified Amended Complaint and did so on the pleadings, i.e., like Strauss, granting a section 2-615 motion to dismiss in which the Village did not answer the complaint.[2]

Pertinent to this amicus brief, in filing its motion to dismiss under section 2-615 of the Code on this count, the Village of Glenview cited Strauss as its authority. See, 735 ILCS 5/2-615. The circuit court followed it.

In Station Place, the Plaintiff's denial of substantive due process complaint count was dismissed. Following Strauss, Judge Conlon applied a rational-basis test that asks only whether the ordinance has a conceivable rational basis. Just like Strauss, viewed this way, plaintiff's complaint in Station Place was deemed to have insufficiently pled a claim

[2] Like Strauss, Station Place has a multi-count complaint that was dismissed. This amici brief only gives the facts on this one count only to give context as it relates to the specific impact of Strauss upon the dismissal of Station Place's case relating "LaSalle Factors" count, and then only do so in general terms to explain Amici's interest in the outcome of Strauss only.

that the zoning ordinance had violated substantive due process under the Illinois Constitution.

In so doing, by dismissing it, just like Strauss, the court did not do a zoning hearing based on facts and by applying the LaSalle Factors, as alleged in the complaint. The plaintiff's substantive due process claim was dismissed.

On September 10, 2021, Plaintiffs-Appellants filed Notice of Appeal of dismissal of its complaint. See, Station Place Townhouse Condominium Association et. al. v. Village of Glenview, 1-21-1131. At this point, no record has been prepared by the Clerk of Court and no briefs have been filed.

ARGUMENT

In dismissing the Plaintiff's claim in Strauss on the pleadings that the City of Chicago's zoning ordinance violated substantive due process under the Illinois Constitution, the Strauss Court failed to consider the LaSalle factors. This was in error, and Amici urge its reversal.

If all the local government needs to do to prevail to get a complaint filed against it by its citizens is to simply point to alleged "rational basis for the zoning ordinance", even hypothetical ones, no complaint can withstand a local government's section 2-615 motion to dismiss. In Strauss, it appears that the Court made its own inquiry from the face of the Plaintiff's complaint itself. Strauss, 2021 IL App (1st) 191977 at ¶ 42. This was error.

A section 2-615 motion is supposed to construed by reviewing the allegations of the complaint in the light most favorable to the plaintiff and by taking all well-pleaded facts and all reasonable inferences that may be drawn from those facts as true.

Here, in Strauss, the LaSalle Factors were pled, yet they were deemed insufficient by the Strauss Court to establish a cause of action upon which relief may be granted.

If a case stops at the pleading stage, there is no judicial review at all and, therefore, no judicial remedy. Without the municipality answering the complaint at all, the court has dismissed their claim. The plaintiffs never got a chance to present a case.

The merits of the lawsuit are not presented and considered by a trial court. The plaintiffs in Strauss are left without a remedy available for Court review: the LaSalle Factors, something Illinois courts have said they have had for nearly 65 years.

I. Failure to Distinguish between "As Applied" and "Facial"

In Strauss, the plaintiff is challenging the constitutionality of a zoning ordinance as applied to a particular parcel of property. Strauss is a property owner who has had unilateral "downzoning "of their property imposed upon them, via the City's ordinance.

Strauss presents an "*as applied*" challenge. He is a plaintiff who is protesting how a legislative enactment is being applied in the context against them.

The plaintiff's circumstances in Strauss cannot be more specific than what is in the allegations of their complaint. The City of Chicago ordinance rezoned only 1 building and 1 parcel of land: the plaintiff's building.

This is an "*as applied*" constitutional challenge to a City of Chicago's zoning decision. It impacts upon his parcel. This is a long-recognized, legally sufficient cause of action.

The Strauss Court cites Napleton v. Village of Hinsdale, 229 Ill. 2d 296 (2008), yet there, Napleton made clear the significant difference between a facial and an as-applied zoning challenge.

Amici urge this Court to reverse Strauss and restore the clear distinction between the two types of challenges.

Whether the type of challenge is "facial" alleging a universal invalidity or "as applied" to a particular property is not the same. The difference is in focus of evidence needed to sustain a claim of invalidity.

A facial challenge to the constitutionality of a legislative enactment is the most difficult challenge to mount successfully because an enactment is facially invalid only if **no set of circumstances exist** under which it would be valid. Courts can even posit hypothetical circumstances. This is a subjective review, of the type done by Strauss here.

This should be contrasted with an "*as applied*" challenge to the constitutionality of a zoning ordinance. This is the Strauss complaint. This requires an examination by the court of the specific facts in relation to a particular parcel of property in the case.

That would ultimately require a trial. As a start, it would certainly require an answer to the complaint by the municipality that passed the ordinance. Dismissal on the pleadings was in error here.

Napleton declined to extend the application of the LaSalle Factors to "*facial*" challenges. Napleton made clear that this court in LaSalle was reviewing the constitutionality of a zoning ordinance as applied to a particular parcel of property and an examination of the specific facts in the case before it. Napleton, 229 Ill. 2d at 316.

Napleton also made clear that in LaSalle, in identifying and applying the factors that may be "*taken into consideration*", the LaSalle Court was reviewing the validity of a zoning ordinance in an "as-applied" challenge. Napleton, 229 Ill. 2d at 317.

Napleton did not extend the application of the LaSalle factors to facial challenges. In so doing, this Court kept the difference in focus of each type of challenge. Thus, the evidence needed to sustain a claim of invalidity continues to be different depending upon whether the challenge is facial-alleging a universal invalidity-or as applied to a particular property. Napleton, 229 Ill. 2d at 318-19.

The Strauss Court's analysis treated the two challenges under the Illinois Constitution as being the same.

The plaintiffs' allegations in Strauss include ultimate facts. Since a fact is well pleaded if a plaintiff has clearly set out the ultimate fact he or she intends to prove, their complaint sufficiently states a claim that the zoning ordinance violates substantive due process under the Illinois Constitution. For this reason, the plaintiff in Strauss deserves judicial review, and was erroneously dismissed.

II. Failure to Apply the LaSalle Factors

The Strauss Court improperly dismissed the plaintiff's complaint at the pleading stage by failing to consider the LaSalle Factors, first enunciated in 1957, but based upon

cases from this Court from years prior to that.

As discussed above, it appears that Strauss misread Napleton's discussion of La Salle. The "LaSalle Factors" are applicable to "as-applied" challenges to an ordinance violating substantive due process, and Strauss presents such a challenge.

In the intervening nearly 65 years, Illinois courts have examined and attempted to balance these factors to decide whether the zoning in question is fair to the owner of the subject property, owners of surrounding properties, and the public. If the answer is "yes", the property cannot legally be rezoned.

The LaSalle Factors focus upon the specific effect of the challenged ordinance upon a particular parcel of property. These factors are objective and workable.

This has been settled law for years, with courts taking them into consideration in reviewing the validity of a zoning ordinance in an "*as-applied*" challenge.

The Strauss Court did not properly consider the "LaSalle Factors" in reaching its rezoning decision. See, La Salle National Bank v. County of Cook, 12 Ill.2d 40, 46-47, 145 N.E.2d 65, 69 (1957) (Factors 1-6); Sinclair Pipe Line Co. v. Village of Richton Park, 19 Ill.2d 370, 378, 167 N.E.2d 406, 411 (1960) (Factors 7-8). Those are:

> (1) the existing uses and zoning of nearby property;
> (2) the extent to which property values are diminished by the particular zoning restrictions;
> (3) the extent to which the destruction of property values of the plaintiff promotes the health, safety, morals, or general welfare of the public;
> (4) the relative gain to the public as compared to the hardship imposed on the individual property owner;
> (5) the suitability of the subject property for the zoned purposes;
> (6) the length of time the property has been vacant as zoned in the context of land development in the vicinity;
> (7) whether a comprehensive zoning plan for land use and development exists; and
> (8) whether the community needs the proposed use.

It was error for the Strauss Court to not apply them at all here. At the pleading stage, the Plaintiffs in Strauss have not gotten a chance to prove their case. Strauss made that challenge in his complaint, and once done, that complaint should not have been dismissed. Instead, the municipality should have been required to file an answer to the complaint.

Dismissal at this point via section 2–615 motion on the pleadings was contrary to precedent and was in error. See, Rodriguez v. Henderson, 217 Ill.App.3d 1024, 578 N.E.2d 57 (1st Dist. 1991), Zeitz v. Village of Glenview, 227 Ill. App.3d 891, 592 N.E.2d 384 (1st Dist. 1992).

Here, as in LaSalle and every case since, there needs to be a trial court adjudication of merits of the complaint. It should be emphasized that the person attacking the ordinance has the burden of proving that that it is not a valid exercise of a municipality's legislative powers. See, La Salle, 12 Ill.2d at 46, 145 N.E.2d 65. However, the municipality still must **answer the complaint**.

If not reversed, Strauss precludes consideration of these long-established set of factors from being considered by a court in reviewing zoning decisions, ending that remedy by not considering it at all: this objective standard being replaced with an entirely subjective standard.

In finding the complaint legally insufficient, Strauss fails to follow precedent. The original LaSalle case reviewed the constitutionality of a zoning ordinance **as applied to a particular parcel of property** and after the circuit court had conducted **a full trial**. See, La Salle, 12 Ill.2d at 45, 145 N.E.2d 65.

Since that time, in deciding the validity of a zoning ordinance, each case since has turned upon an examination of the specific facts and circumstances and based on evidence presented to the trier of fact. See, La Salle, 12 Ill.2d at 46, 145 N.E.2d 65.

In referencing "*some debate about the contexts*" (Strauss at ¶ 41), the Strauss Court appears to have misconstrued the distinction between "*facial*" vs. "*as-applied*" zoning challenges as being a "debate". See, Napleton v. Village of Hinsdale, 229 Ill. 2d 296. 305-306 (2008).

There is no debate. In a challenge to a zoning ordinance on substantive due process grounds, the contexts in which the LaSalle Factors are useful are "as-applied" challenges only, not "facial" challenges.

A zoning ordinance that may **be valid in its general aspects** may nevertheless **be invalid as to a specific parcel of property**. Strauss is the latter category.

Although there was contradictory analysis in Napleton that may have led the Strauss Court in the wrong direction (and may necessitate clarification from this Court), Napleton clearly intended to retain the distinction between the two types of challenges.

Strauss treats both challenges the same and makes the LaSalle Factors inapplicable to both.

The plaintiff in Strauss is making an "*as applied*" claim. By their nature, these are decided on a case-by-case basis. As such, in the context of litigation concerning zoning as to its validity in their application to individual parcels, this Court has long considered these "LaSalle Factors".

Illinois courts examine and attempt to balance these factors to determine whether the zoning in question is fair to the owner of the subject property, owners of surrounding properties, and the public. These principles have been workable for years, enable all parties to get a judicial review, and, most importantly, the Courts have been able to apply them. They are objective and create an evidentiary record for appellate review.

In nearly 65 years, there have been numerous such cases, throughout the state, all fact-specific decisions, following a trial on the merits. See, Zeitz v. Village of Glenview, 304 Ill.App.3d 586, 710 N.E.2d 849 (1st Dist. 1999), 1350 Lake Shore Associates v. Casalino, 352 Ill.App.3d 1027, 816 N.E.2d 675 (1st Dist. 2004), Harvard State Bank v. County of McHenry, 251 Ill.App.3d 84, 620 N.E.2d 1360 (2d. Dist. 1993), Robrock v. County of Piatt, 2012 IL App (4th) 110590, Northern Trust Bank/Lake Forest, N.A. v. County of Lake, 311 Ill.App.3d 332, 723 N.E.2d 1269 (2nd Dist. 2000), Lambrecht v. County of Will, 217 Ill.App.3d 591, 577 N.E.2d 789 (3rd Dist. 1991)

III. Erroneous Adoption of "Rational Basis Test"

Strauss applies a subjective standard to review of the allegations in the complaint that the zoning ordinance violated substantive due process under the Illinois Constitution. The Strauss Court stated:

> "Under the rational basis test, **the court may hypothesize reasons for legislation**, even if the reasoning advanced did not motivate the legislative action. People ex rel. Lumpkin v. Cassidy, 184 Ill. 2d 117, 124 (1998). A law will be upheld if there is "any conceivable basis for finding a rational relationship." Strauss, 2021 Ill. App. 191977 at ¶ 42 (emphasis added).

As posited by Strauss, this rational basis standard allows the Court to conceive of any set of facts to justify the classification in its legislation.

The Strauss Court proceeded to do just that. It stated:

> "As stated in plaintiff's complaint, the secondary effects of having a concert venue at the building's location **provided a reason** to downzone the property. **The complaint itself alleged a rational basis** for the zoning ordinance, and so plaintiff's substantive due process claim was properly dismissed." *Id*. (emphasis added).

Viewed this way, the Strauss Court found a rational basis for the zoning ordinance. It found that the plaintiff's substantive due process claim in its complaint was properly dismissed. In so doing, the Strauss Court failed to apply the LaSalle Factors at all. Amici urge this be reversed.

The "LaSalle Factors" are intended to be an objective analysis by a trier of fact. In contrast, the "rational basis" test as set forth in Strauss is entirely subjective. Lumpkin is not a zoning case either, with its expensive body of case law, nor was it cited in Napleton by this Court in a zoning case 10 years later.

Instead, Lumpkin was interpreting whether a requirement in the Illinois Plumbing License Law was constitutional, a facial challenge. See, 225 ILCS 320/0.01 et seq.

If allowed to stand, under the rational basis standard of review, as posited by Strauss, no plaintiff can get past the pleading stage of stating an "as applied" zoning challenge claim upon which relief can be granted. Such section 2-615 motions to dismiss filed by a local government would be granted, as they were in Strauss. However, this is because Strauss confused "as applied" versus "facial" challenges, and treated them the same. See, 735 ILCS 5/2-615.

The "*rational basis test*", as referenced in Strauss, is appropriate only to "*facial*" substantive due process challenges. The Strauss Court extends it "*as-applied*" challenges. In so doing, by finding that the complaint itself alleged a rational basis for the zoning

ordinance and dismissing it, Strauss fails to distinguish an "*as applied*" challenge from a "*facial*" challenge.

As interpreted by the Strauss Court, the same "*rational basis test*" being used for "*facial*" challenges to legislation per Napleton is now being applied to the "*as applied*" challenge to the zoning ordinance, without distinction between the type of challenge.

Challenges to the constitutionality of a zoning ordinance cannot have the identical level of scrutiny. Amici urge this be reversed.

In dismissing the complaint, the "rational basis test", as applied by the Strauss Court, found a rational relationship for the zoning ordinance from the complaint itself and then proceeded to dismiss the complaint. In so doing, the City of Chicago was never subjected to court review as it had to do so in previous cases under the "LaSalle Factors". Per Strauss, dismissal of the complaint means that the "LaSalle Factors" are never reached.

In Strauss, the plaintiff's substantive due process claim was dismissed without the municipality ever answering the complaint. This "*rational basis for the zoning ordinance*" analysis as set forth in Strauss precludes consideration of the LaSalle factors, since the complaint would already have been dismissed before they can be considered at all.

If that scenario, none of the facts needed for plaintiff to be able to make an "*as applied*' substantive due process claim is ever reached. The result is that the same evidentiary standard ends up being used for facial and as-applied zoning challenges.

Amici urge that this Court reverse the dismissal of plaintiff's substantive due process claim in Strauss.

Leaving plaintiff's challenge to the constitutionality of Chicago's zoning ordinance to the rational basis standard of review leaves them with no remedy to challenge it.

Strauss moves zoning jurisprudence away from zoning case law too. Instead of citing the long line of "*as applied*" local zoning ordinance cases issued by this Court, as followed by lower courts, all of which review substantive due process constitutionality claims applicable to a specific property, as its authority for the "rational basis" test it posits, Strauss cites People ex rel. Lumpkin v. Cassidy, 184 Ill. 2d 117 (1998), a plumbing licensing statute case.

Strauss then extends and misapplies this non-zoning case as being its authority for its use of a rational basis test. This was error. Lumpkin was the constitutional review of "*Illinois Plumbing License Law*", 225 ILCS 320/. At best, this case would be relevant to a facial challenge analysis of whether to void a zoning ordinance enactment in its entirety and in all applications. That is not Strauss.

The issue in Lumpkin was the constitutionality of a limitation who can install lawn sprinkler systems in the "*Illinois Plumbing License Law*" (225 ILCS 320/0.01 et seq.). This Court focused on the regulation of plumbing and the plumbing trade: the enactment in its entirety and in all applications.

That is different from an "*as applied*" zoning challenge, relating to a specific property, as discussed by this Court's discussion of LaSalle in Napleton.

Per Strauss, both "as-applied" and facial challenges to zoning ordinances are being treated the same. Under the analysis as set forth in Strauss, no complaint would ever be considered legally sufficient, therefore, as the complaint would have already been

dismissed, an as-applied challenge using the LaSalle Factors would never be reached. The result is no court remedy.

Amici read Napleton as not intending that result, when it clearly stated that "*the evidence needed to sustain a claim of invalidity will be different depending upon whether the challenge is facial-alleging a universal invalidity-or as applied to a particular property*". The inherent inconsistency with Napleton as created by Strauss can be resolved by simply reversing Strauss.

Since Napleton supports the continued use of the "LaSalle Factors" in "*as applied*" challenges, it was error for a complaint in Strauss which pleads allegations under those same "LaSalle Factors" be deemed legally insufficient to establish a cause of action upon which relief may be granted to warrant dismissal under section 2-615 of the Code of Civil Procedure. Amici urge its reversal.

Amici urge that the "*substantial relationship*" test be the applicable standard of review, with the "LaSalle Factors" standards continuing to be applicable, whereby the trial courts would continue to identify and apply factors that may be "taken into consideration" in reviewing the validity of a zoning ordinance in an "*as-applied*" challenge.

Instead, per Strauss, the same standard, rational basis scrutiny, found applicable in Napleton to "*facial*" challenges to zoning ordinances, is now being expressly extended to "*as applied*" challenges to zoning ordinances. This fails to recognize that "*as applied*" challenges are intended to be courtroom fact-finding supported by evidence or empirical data.

By not applying the LaSalle Factors and a judicial review of the specific effect of the challenged ordinance upon a particular parcel of property, the Strauss Court ends up using the same evidentiary standard in each type of challenge, a result the Napleton Court had expressly rejected.

After failing to recognize significant differences between "*facial*" and "*as-applied*" zoning challenges, the Strauss Court further erred by applying the same "*rational basis*" review. Thus, per Strauss, there is no difference between the types of complaints.

Strauss affords this Court an opportunity to clarify that its analysis in Napleton. Amici urge that the analysis in Napleton not be extended beyond its conclusion that the La Salle Factors do not lend themselves to application to facial challenges.

This court in Napleton declined to extend the application of the La Salle Factors to "facial" zoning challenges. Per Napleton, if a plaintiff raises an exclusively "*facial*" challenge in their complaint, only the rational basis standard is applicable.

In Napleton, this Court expressly rejected same level of judicial scrutiny to all actions in which zoning regulations are challenged. Here, per Strauss, this same rational basis standard for "*facial*" is also being used for "*as applied*", without consideration of the differing rights alleged to be infringed.

This case affords this Court with an opportunity to clarify that Napleton does not limit "*as applied*" challenges from being pursued by plaintiffs such as the plaintiffs in Strauss. If this Court did that, it would be making clear that LaSalle continues to be applicable to "*as applied*" challenges.

Based on the type of challenge, there should continue to be differing evidence needed to sustain a claim of invalidity. Strauss would not be required to plead a standard that he his not arguing.

Amici urge that it be clarified that in "*as applied*" cases, the same factual analysis employed in other zoning decisions with the same "*substantial relation*" standard will continue to be applied. Reversing Strauss means that the "*rational basis*" standard would not be a barrier to a plaintiff making an "as applied' challenge under LaSalle.

IV. Requested Clarification of Napleton

As interpreted by Strauss, the same "*rational basis test*" is being used for "*facial*" and "*as applied*" challenges to the zoning ordinances, without distinction between the type of constitutional challenge.

Per Napleton, the rational basis test governs "*facial*" constitutional challenges to zoning ordinances. To emphasize, Strauss is not making facial substantive due process challenge, so Amici urge that his complaint should not be examined with the same level of scrutiny.

In Napleton, this Court did state that that this "*substantial relation*" language is "*simply an alternate statement of the rational basis test.*" See, Napleton, 229 Ill. 2d at 315, 891 N.E.2d 839. That is, "*the intent of the 'substantial relation' inquiry is to ensure that the challenged zoning ordinance is rational and is not arbitrary or capricious.*" Id.

Strauss affords an opportunity for this Court to clarify Napleton on that point. Amici urge that for "*as-applied*" zoning challenges (not in dispute in Napleton), that the

"*substantial relationship*" test be employed as the standard of review. Challenges to the constitutionality of a zoning ordinance cannot have the same level of scrutiny.

"*Facial*" and "*As-Applied*" challenges to the constitutionality of a zoning ordinance cannot have the identical level of scrutiny. To do that, for "*as applied*" claims, Amici urge that the "*substantial relationship test*" must be applicable here, not the "*rational basis*" test (or at least the "*rational basis test*" as posited by Strauss).

An "*as applied*" review that is less deferential to the municipality would be in accord with precedent of other zoning decisions. That would reverse the Strauss Court's use of a highly deferential to the municipality, rational basis test (so deferential that Strauss' complaint was dismissed without the City even needing to answer the complaint). A substantial relationship test would have taken the LaSalle Factors into consideration when ruling on the City's motion to dismiss under Section 2-615. The trial court should have denied the motion and required the City of Chicago to answer the complaint.

However, the review employed is phrased, the plaintiff in Strauss has pled facts that the LaSalle Factors support their assertions as to the arbitrariness of municipalities' zoning. It was error for Strauss to uphold dismissal of the complaint. Instead, the municipality needs to answer the complaint.

For "*as applied*" challenges, the appropriate standard to apply in determining its constitutionality (i.e., whether it is void) is whether the zoning ordinance at issue is "*arbitrary, capricious or unrelated to the public health, safety and morals*" or "*the restrictions imposed bear no real and substantial relation to the public health, safety,*

morals, comfort and general welfare". See, La Salle National Bank of Chicago v. County of Cook, 12 Ill.2d 40, 46, 145 N.E.2d 65, 69 (1957).

This would be following the precedents of this Court in previous "*as applied*" cases whenin the City of Chicago had passed an ordinance, and this Court has found it to be void.

Amici would like to emphasize two such cases. See, Cosmopolitan National Bank of Chicago v. City of Chicago, 27 Ill. 2d 578, 190 N.E.2d 352 (1963), Harris Trust & Savings Bank v. Duggan, 105 Ill. App. 3d 839, 435 N.E.2d 130 (1982), aff'd, 95 Ill. 2d 516, 449 N.E.2d 69 (1983).

In Cosmopolitan National Bank of Chicago v. City of Chicago, 27 Ill. 2d 578, 190 N.E.2d 352 (1963), the plaintiffs were landowners who challenged the constitutionality of an entire amendatory ordinance that rezoned the plaintiffs' property as to preclude its use as a funeral parlor. The property in question was a vacant parcel situated at the northwest corner of the intersection of North California Avenue and West Pratt Avenue in the city of Chicago.

In affirming the circuit court, this court applied the substantial relationship standard and found that the zoning change was unreasonable and discriminatory as applied to the plaintiffs' property. Cosmopolitan National Bank, 27 Ill. 2d at 585.

In Harris Trust & Savings Bank v. Duggan, 105 Ill. App. 3d 839, 435 N.E.2d 130 (1982), aff'd, 95 Ill. 2d 516, 449 N.E.2d 69 (1983), Harris Bank, as the trustee of the Helen L. Kellogg Trust and owner of the relevant property, challenged the constitutionality of a zoning ordinance as applied to the relevant property.

The actions involved the Kellogg mansion properties located in the 2900 block of North Lake Shore Drive. One of the lawsuits challenged the validity of a zoning ordinance. Plaintiff, Harris Bank filed suits in the circuit court of Cook County against the city of Chicago and William Duggan, Commissioner of the Chicago Department of Inspectional Services.

Much like Strauss, the zoning amendment in question downzoned only the subject property and affected no other property. The trial court held a hearing and number of witnesses testified concerning the propriety of the amendatory zoning ordinance. The trial court then weighed the evidence.

The trial court took the LaSalle factors into consideration in determining validity of this ordinance. In determining that the ordinance was unconstitutional, unlike the Strauss Court, the lower court did apply the substantial relationship test and relied upon the factors also used by the supreme court in La Salle. See, Duggan, 105 Ill. App. 3d at 849-50.

On appeal, this Court affirmed. See, Duggan. Harris Trust & Savings Bank v. Duggan, 95 Ill. 2d 516, 449 N.E.2d 69 (1983). This Court held that the ordinance was unconstitutional as applied to the bank's property, stating that "zoning ordinances must bear a substantial relationship to the public health, safety and welfare." Duggan, 95 Ill. 2d at 532-33.

The substantial relationship test was applied by this Court, in so doing, expressly rejecting the defendant City of Chicago's contention that the ordinance was valid provided there was any rational basis upon which it could be sustained. Duggan, 95 Ill. 2d at 531.

V. Strauss is an Outlier

In affirming the trial court's dismissal of the plaintiff's substantive due process claim, without considering the LaSalle Factors to determine whether the ordinance violates substantive due process, the Strauss Court stated:

> *"¶ 41* ***There has been some debate*** *about the contexts in which the La Salle/Sinclair factors are useful, including for as-applied and facial challenges to zoning ordinances."* (emphasis added).

See, Strauss, 2021 Ill. App. 191977 at ¶ 41.

Strauss cites three cases issued after Napleton: Whipple v. Village of North Utica, 2017 IL App (3d) 150547, Paul v. County of Ogle, 2018 IL App (2d) 170696, Drury v. The Village of Barrington Hills, 2018 IL App (1st) 173042.

The analysis in Strauss is the outlier on Section 2-615 challenges to the legal sufficiency of complaints that a zoning ordinance violates substantive due process under the Illinois Constitution. See, 735 ILCS 5/2-615. The analysis in each of the three cases cited in Strauss are consistent.

In each instance, the reviewing court reversed the granting of Section 2-615 motions to dismiss on the pleadings as granted by the trial court and remanded each case back to the circuit court. In contrast to those three cases, Strauss upheld the granting of a Section 2-615 motion to dismiss.

The three cases do not diverge from the significant differences between a "*facial*" and "*as-applied*" zoning challenges as set forth in Napleton: "*as applied*" challenges to zoning ordinances involving property-specific zoning challenges are evaluated using the LaSalle Factors and "*facial*" zoning challenges are not.

The plaintiffs in all three cases were neighboring property owners, just like Amici Station Place. Each case involved local legislation passed to advantage a private property owner by changing an impermissible use and making it a permissible use. The neighbors challenged the legislation in each instance.

What follows is a summary of why they are all consistent. Had Strauss followed them, it would have similarly meant reversal of granting of the Section 2-615 motion to dismiss. To emphasize, all three cases are reversals of trial court dismissals.

Whipple v. Village of North Utica, 2017 IL App (3d) 150547, 79 N.E.3d 667. Plaintiffs, 13 owners and possessors of neighboring land in La Salle County, filed a complaint seeking to invalidate village ordinances that allowed operation of a proposed silica sand mine adjacent to or nearby their property. ¶ 1 Whipple reversed the granting of a section 2-615 motion to dismiss and remanded for further proceedings. Id.

Paul v. County of Ogle, 2018 IL App (2d) 170696, 103 N.E.3d 585. Plaintiffs, owners of adjacent and nearby properties, filed a complaint seeking a finding that a special-use permit granted by the county to operate a "Motor Carrier Facility" to store garbage trucks and dumpsters was unconstitutional as applied to their properties. ¶ 1. Paul reversed the granting of a section 2-615 motion to dismiss and remanded. ¶ 38

In these two "neighbor" challenge cases cited by Strauss: Paul, 2018 IL App (2d) 170696 at ¶ ¶ 30-32, and Whipple, 2017 IL App (3d) 150547 at ¶¶ 26-33, both cases applied the LaSalle Factors in challenging an existing ordinance, as passed by a local unit of government.

The third case cited in Strauss, Drury v. Village of Barrington Hills. 2018 IL App (1st) 173042, 123 N.E.3d 31, is procedurally different. Plaintiffs, owners of adjacent and residential properties, filed a complaint in which it alleged that the Village passed an unconstitutional ordinance allowing commercial horse boarding operation on residential property within the Village. ¶ ¶ 5, 95. Drury reversed the dismissal of the plaintiff's substantive due process challenge via a section 2-615 motion and remanded for further proceedings. ¶ 10, ¶ 50.

Drury, 2018 IL App (1st) 173042, differs in that, 3 years of after the filing of the original complaint, the case had changed from its original "neighbor" and "as applied" challenge to become a constitutional challenge to a repealed zoning ordinance. In rejecting a mootness argument, the Drury Court declared Drury's challenge to be facial, "seeking a declaration that the ordinance is void *ab initio* —meaning it was void from the inception and thus was of no effect". Id. at ¶ 57, ¶¶ 115-116.

Amici would like to point out one additional recent case, not cited in Strauss. In Sullivan v. Village of Glenview, 2020 IL App (1st) 200142, --- N.E.3d ----, the plaintiffs, neighboring homeowners, filed a complaint to invalidate a 1988 municipal ordinance that the Village asserted had already rezoned property adjacent to their homes from residential to commercial. ¶¶ 1, 10, 50. Plaintiffs filed suit in 2019, after a commercial developer applied for permits to rezone and construct commercial buildings on that property, per that 1988 ordinance. ¶ 1.

In Sullivan, the trial court had dismissed the complaint as untimely, deciding that the 90-day limitations period to challenge a rezoning ordinance as set forth in Public Act 94-1027 was applicable. ¶¶ 1, 17. See, 65 ILCS 5/11-13-25. Sullivan reversed this trial

court's dismissal on limitations grounds under section 2-619(a)(5) of the Code of Civil Procedure, on the basis that that limitation provision was inapplicable (no rezoning "decision" had occurred in 1988) and remanded. ¶ 2. See, 735 ILCS 5/2-619(a)(5).

Strauss, a property owner, and the 4 recent "neighbor challenge" cases cited above share a common denominator: the necessity of the court system as being available to protect them against a local government.

The court system was there for every plaintiff but Strauss.

Its mere availability is a check on local government overreach. If the City of Chicago or any other municipality does not believe that there is judicial review of its ordinances, then you end up with Strauss.

While Strauss references "some debate", the body of case law here has been consistent. Strauss, 2021 Ill. App. 191977 at ¶ 41. Strauss is the outlier here, even among the cases it cites.

CONCLUSION

In Strauss, the plaintiff is challenging the constitutionality of a zoning ordinance as applied to a particular parcel of property. Should the appellate court ruling be affirmed, under the "rational basis" standard of review, as posited by Strauss, no plaintiff can get past the pleading stage for stating a claim upon which relief can be granted.

By treating "as-applied" and "facial" challenges to zoning ordinances as the same, under the analysis as set forth in Strauss, no complaint would ever be considered legally sufficient. No plaintiff would get past a section 2-615 motion to dismiss filed by a local government.

As the complaint would have already been dismissed, an "as-applied" challenge using the LaSalle Factors would never be reached.

At the pleading stage, as a matter of law, even if there are numerous allegations in the complaint, a local government can get out of a challenge to an ordinance by getting it dismissed without being required to offering an official justification for it (i.e., without answering the complaint).

If a local government believes that there will be no court oversight (if they believe a lawsuit would be dismissed), the local government officials will feel empowered to fill the vacuum and do whatever they want. This empowers bad government.

The loss of judicial oversight would be a significant loss to the property owners who rely upon the court system for independent protection. For nearly 65 years, Courts in this State have considered and weighed this evidence specific to a particular parcel of property in reviewing the validity of a zoning ordinance in an as-applied challenges.

The LaSalle Factors focus upon the specific effect of the challenged ordinance upon a particular parcel of property. These factors are objective and workable. The "*LaSalle Factors*" are intended to be an objective analysis by a trier of fact.

In finding the complaint legally insufficient, Strauss fails to follow that precedent. The La Salle factors expressly focus upon the specific effect of the challenged ordinance upon a particular parcel of property. The plaintiff in Strauss deserves judicial review and was erroneously dismissed.

If affirmed, Strauss would replace that settled law with a "rational basis" test that is entirely subjective, whereby a law will be upheld if there is "any conceivable basis for

finding a rational relationship." The court may hypothesize reasons for legislation, even if the reasoning advanced did not motivate the legislative action.

The result of affirmance is no judicial remedy to claim that a zoning ordinance violates substantive due process under the Illinois Constitution. This would occur despite a clear right to judicial review of such decisions, set forth in Public Act 94-1027.

If this Court reverses Strauss, local governments that enact zoning ordinances will be answerable to courts. Plaintiffs like Strauss will be able to make a substantive due process claim and prove their case via LaSalle Factors. Checks and balances would be restored.

For those reasons, Station Place respectfully requests that this Court reverse the judgment of the Appellate Court in this matter and award the Plaintiff-Appellant their requested relief.

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No. 127149

IN THE SUPREME COURT OF ILLINOIS

BRIAN J. STRAUSS, individually and d/b/a 1572 North Milwaukee Avenue Building Corporation Plaintiff-Appellant, v. CITY OF CHICAGO, Defendant-Appellee.	)	Appeal from the Illinois Appellate Court, First District, No. 1-19-1977 There heard on appeal from the Circuit Court of Cook County, Chancery Division, No. 2018-CH-00256, Hon. David B. Atkins, Judge Presiding

CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages or words contained in the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 36 pages.

/s/ William J. Seitz

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CERTIFICATE OF SERVICE

I hereby certify that on November 4, 2021, I electronically filed the foregoing ***AMICUS CURIAE* BRIEF OF STATION PLACE TOWNHOUSE CONDOMINIUM ASSOCIATION AND PRAIRIE STREET TOWNHOMES CONDOMINIUM ASSOCIATION IN SUPPORT OF PLAINTIFF-APPELLANT** with the Illinois Supreme Court using the eFileIL system, which will send notification of such filing to the following:

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Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this Certificate of Service are true and correct.

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