

RICH FLOOD

Delivering Win/Win Land Use Results For McHenry County's Growth

by Helene Price



CRYSTAL LAKE—Thirteen years ago, Richard Flood was representing McHenry County village Bull Valley in a forced annexation of approximately 2,000 acres. Although neighboring Woodstock was not a party to the litigation, it opposed Bull Valley's position because some of this land would have eventually annexed to Woodstock. By the time the case concluded, Woodstock City Manager Tim Clifton would have preferred that Flood had been on their side.

About a year later, Woodstock's city attorney was appointed to the bench. The town had to find a new attorney, and Flood's law firm, **Zukowski, Rogers, Flood and McArdle**, sought the job.

"At first," Clifton recalls, "I didn't want to hire them because Flood had dismantled us in the other case." Recalling Flood's preparation, tenacity, and confidence, he reconsidered.

Today, Clifton says, "The breadth and variety of his legal knowledge has served the city very well." And he would not want anyone else representing Woodstock.

Flood has been representing municipalities and other units of local government for almost all of his 33-year legal career. Much of that work has involved issues of land use, zoning and planning, and impact fees and exactions. While most of his business is centered in McHenry County, he has been hired as far away as the southern end of Illinois when that area began experiencing growth similar to that which has been taking place in Flood's part of the world since the late 1980s.

He has drafted impact fee ordinances for numerous governmental entities across the state and, for 22 years, has been the Illinois Municipal

League's "point man" on impact fees and exactions, donating his time and expertise to draft legislative proposals and comments, testify before the state legislature, speak at conferences, and write articles.

David McArdle, Flood's law firm partner, calls him so dedicated to land use law that he doesn't just follow the law, he tries to change it to make it work better for anyone who is trying to develop land.

Entrepreneurial Spirit

Flood, 60, grew up in Oak Park. He began college as an engineering major at the University of Illinois in Champaign but graduated from the university's Chicago Circle campus in 1971 with a degree in political science.

His courses in science and math as an engineering student were helpful, Flood says, in developing organized and logical thinking and providing a background that is applicable in many land use cases.

In college, Flood worked part-time for an enterprise called "Law Clerk," which was owned by neighbors John and Anne Sullivan, both attorneys. His job consisted mainly of running errands and spindling motions, but the business was located in a law office, and it introduced him to the work attorneys do.

After graduation, he spent two years as a product line analyst for Maremont Corporation, a manufacturer of auto parts, and then decided to try law school.

"I knew what I didn't want to do. I wanted more entrepreneurial kinds of experiences, the possibility of owning my own business and doing

a variety of things and working directly with people on their problems, as opposed to sitting and analyzing products and dealing with inanimate objects all day. The variety of possibilities and working with people is probably what drew me into law."

He enrolled at Chicago-Kent College of Law and began clerking for a personal injury firm whose senior partner Alan Morrill also ran The Court Practice Institute, a trial advocacy school. While Flood operated video cameras to record the week-long training sessions, he was simultaneously receiving valuable instruction from some of Chicago's top litigators.

Upon earning his law degree, Flood clerked for First District Appellate Court Justice Francis Lorenz. As an assistant Chicago corporation counsel, Lorenz was involved in land acquisition for O'Hare Airport, the Chicago Skyway, and the Eisenhower Expressway. Later, as director of the Illinois Department of Public Works and Buildings, he oversaw development of the Dan Ryan and Stevenson Expressways. Justice Lorenz became a mentor who introduced Flood to land use law.

In the Center of the Action

When the clerkship ended, Flood wanted to get away from Chicago and work for a small firm where he could quickly gain hands-on experience.

"I came out to Crystal Lake by happenstance. A cousin's college roommate, Joseph Condon (now a 22nd Judicial Circuit Court judge), was a partner in a Crystal Lake firm, Joslyn & Green. My cousin said, 'I know this guy out in Crystal Lake—is that far enough away?'"

So Flood went out to Crystal Lake to have lunch with Condon, who happened to see Mike Poper, a partner in Zukowski, Zukowski, Poper and Rogers, at the courthouse. Condon gave Flood's name to Poper. A month later, Flood was employed at the predecessor firm to Zukowski, Rogers, Flood and McArdle.

"There were exactly six offices, and I was the sixth lawyer," Flood recalls. Today, the firm is the largest in McHenry County, with 20 attorneys housed in two buildings.

The auspicious move placed Flood squarely in the center of development action as McHenry County became the fastest growing area in Illinois. With now deceased partner Richard Zukowski as another mentor, Flood was soon representing the firm's municipal clients. A large component of that was doing development work on their behalf.

"The growth in the southeast portion of the county started in '85 slowly and then really started building very fast in the '90s," Flood says. It began as residential growth, followed by commercial.

"When I first started representing some of these towns that are now 30,000, they were less than 5,000 people. All that growth on Randall Road involved issues that we were involved in."

"Rich got into the world of development on the ground floor and he grew with it," McArdle says of his partner.

Flood also began representing developers and large landowners, mainly outside of McHenry County, providing him the experience to be able to see all sides of a development situation. While representing his client is of the utmost importance, Flood describes his style as "collaborative."

Long-Term Perspective

"I've always worked well in partnerships, whether it's my business partnership or developing partnerships in terms of doing deals. I always try and find a win/win situation. If everybody does a deal, but they walk away unhappy, chances are the deal isn't going to work out too well. So, you try and find ways to solve problems that everybody can live with and feel like they're all working together.

"Most real estate situations...it's a long-term marriage. It's built on relationships. Few people are successful in the development business if they go in for a quick turnover of money and that's the end of it. Whether it's a big or small company, a big or smaller municipality, you're going to work together for a long time. People have long memories if you don't do what you say you're going to do."

It is the long-term evolution of projects that Flood finds fascinating about development.

"When I started working on particular pieces of land, originally the plan may have been for residential use and ended up, 10 years later, being shopping centers or some other totally different kind of development than originally was thought of," he says.

"If you asked people 30 years ago what they were planning for in terms of development out here, they probably would have said Route 31," he continues. "And Route 31 didn't turn out to be what was developed, it was Randall Road that was massively developed and Route 31 still has long stretches of empty space. So there are a lot of surprises; things happen differently than you anticipate, and you have to, again, plan for the long term. People come in with plans for one thing and end up five years later with something entirely different."

Client Joe Galvin, an Elgin real estate broker and developer, knows this firsthand. About five years ago, he began planning to develop 270 acres north of I-90 on the Randall Road corridor and immediately turned to Flood, who had represented Galvin's father for 15 years. Flood helped him determine potential uses for the property and create a land plan. The downturn in the economy is forcing a revised approach. The project will take longer to complete and may look different from what was originally envisioned.

Galvin's confidence in Flood makes him

comfortable with the detours. They are focusing on seeking "special development district" zoning to allow, essentially, all zoning options except gaming, for maximum flexibility. Flood is helping identify unique users and non-traditional financing sources.

"He is invaluable because he knows how municipalities think," Galvin says. "He also understands that the owner's objective is to maximize the return.

"We look to Rich for help with legal things, but he's much more than that because he has an understanding of what's going on in the market," Galvin says, adding, "He thinks outside the box."

Ruth Schlossberg, of counsel to ZRFM, agrees. "He's very good at global thinking. It's not just legal. He doesn't let a problem go until he's looked at many solutions, legislative solutions; what is the human side of it, the political side of it, the media side of it?"

Schlossberg believes this ability to see multiple sides of an issue has contributed to Flood's success in drafting enforceable impact fee ordinances that withstand challenges and is also reflected in the work he does with communities looking at the larger implications of growth and change. "He's very helpful when you get into strategic planning," she says.

Roger Huebner, IML general counsel, describes Flood as a "fair, forward thinking practitioner who sees how things will be, not how they are. With land use, the key is always the future, not the current; it's the long term and the future."

And Flood is optimistic about the future. As in the 1980s and '90s, this recession, he predicts, will eventually present opportunities for those who can purchase land today that will be part of the next growth spurt.

His collaborative approach is particularly well-suited to this economic climate. With traditional credit sources becoming scarcer and municipalities' revenues down, he sees developers and municipalities cooperating more so that all may benefit.

"You're seeing a lot more public/private partnerships and unique opportunities for funding that nobody used to think of. Some may only be available for very large quasi-public projects."

An example is the federal EB-5 program offering permanent residency visas or green cards to qualified foreign investors who invest at least \$1 million in an appropriate project. Flood believes McHenry County will eventually see a project avail itself of this program.

Memorable Cases

Flood is particularly interested in disputes between landowners and municipalities or between competing communities, with two significant annexations being especially memorable. Early in his career, he represented Lake in the Hills in its ultimately successful effort to annex the then-Crystal Lake Airport at the same time Crystal Lake was trying to do the same. The facility is now the Lake in the Hills Airport.

Several years later, he represented Lake in the Hills in a 1,200-acre annexation that contributed to the village's growth from just under 6,000 people to today's population of more than 29,000.

Flood recalls a landowner/municipality controversy as much for its duration as the issues. Clients Lake in the Hills and Algonquin opposed Laidlaw Waste System's efforts to site a solid waste landfill in unincorporated territory between the two.

Hearings began five times. Injunctions were granted and vacated. One proceeding lasted six weeks, 12 hours a day, seven days a week; the decision reached was thrown out on a technicality. A subsequent hearing took two months and was appealed. The case went to the Illinois Pollution Control Board and back to the appellate court before Laidlaw's petition was, after five years, denied. The site is now a residential subdivision.

It's Not Just All About Land Use

In the course of handling the Laidlaw matter, Flood came across a copy of a 1956 proposal for a garbage dump in McHenry County. The proposal was to do two things: dig a gravel pit and fill it with garbage. The county board proceedings took 45 minutes and a page and a half in the ledger book.

That contrast to the complexities of contemporary land use law and the increasing demands on today's elected municipal officials prompted Flood to embark on a new endeavor: writing a book. Co-authored by Schlossberg and recently published by the Illinois Municipal League, *You've Been Elected!* is a practical guide to issues encountered in local governance.)

The book illustrates Flood's ability to make complex issues comprehensible to the layperson and reveals his sense of humor. "Rich's Rules of Order" condenses Robert's Rules to 12 rules on a one-page chart.

Flood is past president of the McHenry County Bar Association and is active in the state bar association and the McHenry County Council of Governments. He is the IML's representative to the Governor's Task Force on Impact Fees.

His workload keeps two secretaries and a paralegal busy in a corridor outside his office designated as "Flood Alley," complete with street sign. "Long hours come with the territory when you do development because you're in the office during the day working on projects and you're at meetings at night because that's when municipalities meet. Routinely, I'm at meetings two to three nights a week."

Flood and his wife, Janice, have three daughters. The oldest, an attorney, clerks for Second District Appellate Court Justice Susan Hutchinson. The younger two are in graduate school.

Flood modestly attributes his success to "hard work and preparation." Clients and colleagues deem him a quick thinker, reflective, a genuine intellectual, and a problem solver.

"Besides that," Huebner says, "he's just a terrifically likeable guy, a genuine human being." ■