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December 24, 2025

RE: CON Application # 25-041
Notice Regarding Memorandum and Order in Case No. 2025 CH 18 in advance of the pending 12-25-25 deadline

Dear HFRSB Members:

Please find attached a 17-page Order of Judgment entered on December 22 by the Honorable David M. Olson, presiding in Stephenson County of the Fifteenth Judicial District, in Case No. 2025 CH 18. The Court determined that, in order to sell the County's Nursing Home (also known as Walnut Acres), the County—through its agents, the County Board—must first submit the question of whether the Nursing Home should be sold to the voting public by referendum.

Any attempt to proceed with a sale without complying with the governing statute, which was the basis of the litigation, has now been addressed and resolved by the Court's Order.

Accordingly, I am writing to place you on notice that this matter is not fully resolved and remains pending before the Court. Plaintiffs believe that additional issues regarding the contract between the County and the current management company of the nursing home are now ripe to pursue in light of the attached Court Order.

Please contact me if you have any questions. I may be in further contact as this matter proceeds. Kindly take note of this information before any decisions are made that could unnecessarily complicate the ongoing litigation.

Very truly yours,



Scott A. Berndtson
Berndtson Law, P.C.

Attached: Order of Court in Case No. 2025 CH 18 – Stephenson County Nursing Home

DEC 23 2025

STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
STEPHENSON COUNTY

Shanella Bardill
CLERK OF THE CIRCUIT COURT

Edward Klein & Kevin Lamm,

Plaintiffs,

v.

Case No. 2025 CH 18

Stephenson County, a governmental
Corporate entity; **Scott Helms**, in
his official capacity as Chairman
of the Stephenson County Board,
and **Freeport Nursing, LLC**, an
Illinois limited liability company,

Defendants.

MEMORANDUM OPINION and ORDER

This matter came before the Court on December 1, 2025, for oral argument on cross-Motions for Summary Judgment. Plaintiffs appeared by their attorney, Scott Berndston, and Defendants Stephenson County and Scott Helms appeared by their attorney, James Wargo. The Motions had been fully briefed preceding oral argument. After hearing argument, the Court took the matter under advisement, and this Order follows accordingly.

Background

Stephenson County began operating a nursing home enterprise in the early 1960s, housing residents in a County owned building that was not specifically designed for such purpose. In 1970, the Stephenson County Board of Supervisors approved the submission of a bond referendum question posed to the voters of Stephenson County, which asked whether the County should issue \$800,000.00 in bonds for the express purpose of building a physical nursing home structure. The voters approved the bond issuance referendum, and the current nursing home building located at 2946 South Walnut Road, Freeport, Illinois, was built as a result, construction thereof having been completed in 1971. By law, as of 1971, and up until 1985, that nursing home building could have been sold upon a 2/3rds majority vote of the County Board.

In 1985, the Illinois General Assembly amended section 9 of the County Home Act (55 ILCS 5/2-21001(9)), which added the following language: "However, if the home was erected after referendum approval by the voters of the county, it shall not be sold, disposed of or leased except after referendum approval thereof by a majority of the voters of the county voting thereon." This provision was then subsequently amended such that allowance for leasing the nursing home was removed from the referendum requirement and thereafter allowed a lease of a County owned nursing home by 3/5ths vote of the County Board. The issue in this case, though, is about selling the nursing home building, so the amendment regarding a separate leasing allowance, enacted after the 1985 amendment, has no direct bearing on the issue at bar - for now, anyway.

At some point in 2025, the Stephenson County Board voted by 2/3rds majority to sell the Nursing Home operations and the physical structure of the "nursing home" located on Walnut Road to a 3rd party (the Defendant herein named "Freeport Nursing, LLC" is the purported Buyer), and allegedly executed a contract for that purpose. The proponents of that maneuver have promoted the legal position that a County Board vote to sell the nursing home was a lawful undertaking, whereas the opponents of that procedure argue that only a public referendum majority vote can authorize sale of the nursing home.

Procedural Issues

The Plaintiffs herein filed this lawsuit, challenging the legality of the sale of the nursing home based on a vote by the members of the County Board, as opposed to selling the nursing home pursuant to a referendum voted on by the voters of Stephenson County. This case was filed in August of 2025, and on the day that lawsuit was filed, the Plaintiffs attempted to secure a Temporary Restraining Order to stop the County Board from voting to sell the nursing home - that County Board vote was scheduled to take place later that day at a scheduled County Board meeting. The Court declined to stop the vote by the County Board, opining that the best information available to the Court indicated that the real issue was the resultant validity of any contract entered into for that purpose, and not the Board's vote on the subject, the results of that vote being an unknown variable at that point. The Court could have decided this case within a matter of days thereafter, but the controversy had to be presented properly to the Court in order for the Court to decide the case on its merits. That required time for

full participation by the Defendants, and necessitated the use of the correct mechanics to get the matter to the point where a Judge could decide the case. All of the parties were anxious to get to that point, but the matter (by standards of a court case) took off in that direction so quickly that there were several starts and stops and re-starts along the way, including addition of parties and the filing of amended Complaints. That is to be expected, under such circumstances, but we have now arrived at the correct "decision point".

Specifically, Defendants filed a Motion for Summary Judgment on the declaratory judgment count of Plaintiffs' complaint, alleging that as a matter of law the statute enacted in 1985 that amended the manner in which the nursing home could be sold is not applicable to the Stephenson County Board's sale of the Stephenson County nursing home in 2025. Plaintiffs countered with a Motion for Summary Judgment on the same issue, alleging that they are entitled to a judgment as a matter of law that the nursing home can only be sold by a referendum submitted to the Stephenson County voters and that the Board's efforts to sell the nursing home by County Board vote was not a lawful undertaking. Technically, then, these are both Motions for "partial" summary judgment. Defendants only directed their Motion to the declaratory judgment portion of Plaintiffs' Complaint. Practically, if the Court were to agree with the Defendants, the case would end with a final adjudication, as all other portions of Plaintiffs' claims for relief would be mooted and rendered a nullity. Plaintiffs requested various relief in their Motion for Summary Judgment, but much of the requested relief is contingent upon the Court's ruling on the declaratory judgment request, and that affiliated relief is not ripe for adjudication unless and until the Court rules in Plaintiffs' favor on the declaratory relief issue and the parties are thereafter provided the opportunity to adjust their positions in response thereto.

Issues at Bar

Before discussion of what is actually at issue, for purposes of this Order, the Court will point out what is not at issue.

Standing: Defendants did not object to the standing of the Plaintiffs to bring this action. Standing is an affirmative defense that must be interposed by Defendants, and because such was not presented by the Defendants, the Court is acting on the premise that the Plaintiffs have standing.

Method of Court Review: Defendants did not challenge the type of proceeding by which Plaintiffs initiated this action. A declaratory judgment action is the correct cause of action to challenge a "legislative action" undertaken by the County Board. There was no argument made that the action complained of was "administrative", which would require an administrative review proceeding.

Misnomer: In Plaintiffs' reply to Defendants' Motion for Summary Judgment, the Plaintiffs requested that the Court grant a misnomer Motion to correct the manner in which the Defendants are named in the caption of the case. It is clearly a misnomer situation, and not a misidentification or misjoinder issue - if it is even a "misnomer" at all. Plaintiffs only asked that the designation language be manipulated. Defendants acknowledged the "incorrect" designation of the Defendants in prior pleadings, but pled over the "mis-designations" in any event. The parties themselves have each used various iterations of the designation of the parties in the captions in their pleadings, and the request does not change anything except the designation of capacity or legal status of the named Defendants. Plaintiffs have placed the correct parties into the case, they just did not name them in the correct manner. That request is hereby granted, and, for posterity's sake, the manner in which the caption appears above in this Order is the correct caption to be used by the parties and the Clerk hereafter.

Newcomer Affidavit: Defendants attached an Affidavit to their Motion for Summary Judgment (the "Newcomer Affidavit"). Plaintiffs sought to strike paragraphs 5 through 20 thereof, and Defendants' reply thereto was a concession to the striking of paragraphs 9 through 20 thereof. The question, then, is whether the Court would strike paragraphs 5-8 thereof, or consider those paragraphs in making this decision. Plaintiffs argue that paragraphs 5 through 8 should be stricken based on hearsay and because "they are based entirely on historical records . . . that predate the affiant's employment by nearly five decades and are therefore not within her personal knowledge . . .". This is not in and of itself a valid objection to those paragraphs in this context because the Illinois Rules of Evidence allow for the authentication and potential introduction of evidence of historical records and public records based on the verification by a person other than the one who personally undertook their recording or witnessed same. As a result, the Court did consider paragraphs 1 through 8, inclusive, as evidence for purposes of these cross-Motions.

Erection of the Nursing Home: There was an argument brewing from the start of this case that Defendants were going to assert that this nursing home was not "erected" by referendum. The law change in 1985 said that any nursing home "erected" by a referendum could only be sold by public referendum voted on by the county voters. The argument was, supposedly, that Defendants would posit that the Stephenson County nursing home was "erected" in the 1960s, because the "nursing home" is the operation or legal entity, and the "nursing home" was therefore "erected" before the physical structure for the nursing home was built, and the "erection" of the nursing home defined as an entity or operation (and not a physical structure) without a bond referendum means that the nursing home building could be sold by the vote of the County Board in 2025. However, despite the fact that Plaintiffs continued to argue that "erected" means the physical building itself, the Defendants formally abandoned this argument (see Page 12 of Defendants' Motion for Summary Judgment) and conceded that "erected" in the applicable statute refers to the building of the physical structure known as the nursing home.

Mandatory v. Directory: The statutory amendment of 1985 says that a nursing home erected as the result of a public referendum "shall not be sold" except by public referendum. Neither party addressed any argument relative to the "mandatory v. directory dichotomy" or the "mandatory v. permissive dichotomy", and, as a result, neither will the Court. The Court will presume that the term "shall not" is a mandatory command to the County Board.

Plaintiff's Affiliated Prayers for Relief: Plaintiffs have multiple Counts in their Complaint, including a prayer for injunctive relief relative to actions being taken on the alleged contract entered into with Freeport Nursing, LLC, and a request to vitiate the contract allegedly entered into between the County Board and Freeport Nursing, LLC. The Court has never been presented with that Contract, so the Court cannot possibly take any action that is directed to that Contract. The Court will point out that the current statute in effect allows the County Board to lease a nursing home that was built after referendum by 3/4ths vote of the Board, and so leasing the nursing home may have been undertaken lawfully (the Court has no information on the vote by the Board nor the terms of the contract regarding leasing the nursing home to Freeport Nursing, LLC, as a "contingency plan"). Freeport Nursing, LLC, has not participated in this case to date, on the premise (it would appear) that the declaratory judgment decision must be brought to fruition first. The only thing the Court is considering at this point is the declaratory judgment action - Count III of Plaintiffs'

Second "Corrected" Amended Complaint and the sole prayer for relief therein - that calls upon the Court to rule on the validity of the County Board voting to sell the Nursing Home instead of submitting that decision to the voters of Stephenson County. The Court will note that Plaintiffs' Complaint uses heading designators by roman numerals I, II, III, and IV - a classic manner of pleading separate causes of action - but only "III" and "IV" are actually "counts" or causes of action.

Motion to Dismiss Affirmative Defenses: The Court is not herein addressing Plaintiffs' Motion to Strike Defendants' Affirmative Defenses. First off, the Court is not at all sure what the Plaintiffs' are requesting in that regard - their Motion asks the Court to strike the affirmative defenses entirely, then answers every part thereof with denials or admissions, and then asks that they be "denied". Further, Defendants did not respond to that Motion, nor was it briefed or argued, and that is likely because the parties believe that a ruling on the declaratory judgment issue could well definitively dispose of those affirmative defenses. In any event, the Court will not herein address that Motion.

This is a Legal Issue: This case is not about the practicality or economic viability of the County owning and/or operating the nursing home, or whether or not privatization of the nursing home makes the most sense moving forward. In fact, keeping the nursing home in the public domain may be horribly impractical and economically ruinous, but no such considerations are within the Court's province. The Court is not being called upon to cast a vote on what to do with the nursing home. It is purely a legal consideration, that being the interpretation and applicability of a statute.

Issue at Bar: What is before the Court, and the sole subject of this Order, is the legality of the County Board's affirmative vote to sell the County Nursing Home, instead of placing it to the voters of Stephenson County pursuant to a referendum.

Summary Judgment Standards

Summary Judgment is an expeditious and encouraged undertaking in any litigation because it benefits the litigants and the community and the judicial system by avoiding the cost and the inconvenience of protracted litigation - if such can be legitimately avoided - and unnecessary court proceedings. See, e.g., *Fooden v. Board of Governors*, 48 Ill.2d 580 (1971). Summary Judgment is a

fact-based Motion - as opposed to a pleading-based Motion - and its purpose is not to try a question of fact, but to determine if there is an existence or absence of a genuine issue of material fact, and while it is a drastic method of disposing of a case, it can be employed in the event that the pleadings, admissions, depositions and affidavits on file show that there is no material issue of fact in dispute and that the movant is entitled to judgment as a matter of law. *Adames v. Sheahan*, 233 Ill.2d 276, 295 (2009). The resolution of a summary judgment request is not a matter committed to the trial court's discretion - either the movant is entitled to judgment as a matter of law or the movant is not so entitled. *Yusuf v. Village of Villa Park*, 120 Ill.App.3d 533, 540 (2nd Dist., 1983). The non-movant need not prove its case at this stage, but must present some factual basis which would support its claim. *Schrager v. North Community Bank*, 328 Ill.App.3d 696, 708, (1st Dist., 2002). However, where a case presents no genuine issue of material fact, and requires only the application of recognized legal principles to an agreed (or uncontested) factual situation, a trial is unnecessary. See, e.g., *Thompson v. Webb*, 138 Ill.App.3d 629, 93 Ill.Dec. 225, 486 N.E.2d 326 (4th Dist., 1985). Further, Summary Judgment is not appropriate if it is possible to draw more than one reasonable inference from even undisputed facts in the record. *Buchaklina v. Lake County Family YMCA*, 314 Ill.App.3d 195, 199 (2nd Dist., 2000). Questions of fact that are not material will not preclude Summary Judgment - a question of fact is "material" if it is relevant to one of the controlling issues in the case. *First of America Bank, Rockford, N.A. v. Netsch*, 166 Ill.2d 165, 178 (1995). Additionally, upon the filing of cross-Motions for Summary Judgment - so long as on the same issue - the parties thereby stipulate that the material facts are not in dispute and that only a question of law is at issue, and they invite the Court to rule on the record accordingly. *Pielet v. Pielet*, 2012 IL 112064.

In this case, the Court concurs that there are no material facts in dispute, that the question at hand is one that is joined by all parties as the same question they each seek to have answered, and that the issues to be decided are solely legal.

The Respective Theories and Positions of the Parties

The Plaintiffs' position on the issue at bar is simple and straightforward - Plaintiffs allege that they are entitled to a declaration that the County's attempted sale of the nursing home, by County Board vote as opposed to public referendum, is unlawful. Defendants' position admits that the law as amended in 1985 would otherwise require a public vote to sell a County nursing home, but

argue that amendment does not apply to the 2025 sale of the Stephenson County nursing home and the Stephenson County Board was authorized to sell the nursing home on a 2/3rds Board vote, as opposed to submitting the matter to a public vote. The Defendants' position is based on: 1) the correlation between two sections of the statute relative to County Nursing Homes which dictates the referendum-required sale of a county owned nursing home actually does not apply to the Stephenson County nursing home; and, 2) the 1985 statutory amendment that required a public referendum to sell a nursing home built as the direct result of a public referendum does not apply to nursing homes that were built preceding its enactment. If Defendants' position prevails, it defeats Plaintiffs' cause *in toto*, and if Defendants' claims fail, Plaintiffs position prevails on the issue of how the nursing home could be sold - because the parties have invited the Court to decide that very narrow and defined issue, as a matter of law, and the question calls upon the Court to "select" only one of the only two possible answers. In other words, the choice is strictly binary - did the County Board have the authority to sell the nursing home by County Board 2/3rds vote, or could such action only be taken by submission of the issue by referendum majority vote of the voters of Stephenson County? The Court will take up Defendants' case first, in this analysis, and Plaintiffs' claims secondly.

Section 8 and 9 Interrelation

Prior to 1985, the law provided that a County-owned nursing home could be sold upon a 2/3rds majority vote of the County Board. Ill. Rev. Stat., Ch. 34, Sect. 5362(8) and (9). In 1985, the controlling statute was amended by addition of language in 5-21001(9) of the Counties Code to provide that any County owned nursing home that was built ("erected") pursuant to a public vote referendum could not be sold except by way of a publicly voted referendum for that purpose. P.A. 84-610. In 1970, Stephenson County had issued bonds to build the current nursing home structure pursuant to a publicly voted referendum expressly for that purpose. Defendants argue that the language of P.A. 84-610, whereby it is stated that ". . . if the home was erected after referendum approval by the voters of the county, it shall not be sold, disposed of or leased except after referendum approval thereof by a majority of the voters of the county voting thereon", applies not to a bond referendum issued preceding the amendment, but instead applies only to a nursing home building erected by way of a tax levy as authorized by Section 5-21001(8) of the Counties Code. Subsection (8) allows for a County to levy a tax to build or improve or maintain a nursing home by way of approval therefore on a public vote on the issue,

and Subsection (8) was added to the statute at some point prior to 1985 and subsequent to the Stephenson County nursing home being built. Defendants argue "it is clear that the Legislature was referring to the previously adopted Nursing Home Property Tax Referendum Provision under the County Home Act and currently under Section 5-21001(8) of the Counties Code".

The Court will point out that the public did not vote on a referendum that asked the voters if Stephenson County should build a nursing home structure. The voters were asked, in 1970, whether bonds should be issued for the purpose of building a nursing home, and the voters of Stephenson County answered in the affirmative. That means, for purposes of interpreting this statute, that the voters of Stephenson County approved the erection of the nursing home by public referendum. When Stephenson County issued bonds to erect the nursing home in the early 1970s, they had express authority to do so upon affirmative vote of the voters as to such a referendum. Ill. Rev. Stat., 1973, Ch. 34, Sect. 306. The County continues to have that power to this day. 55 ILCS 5/5-25021. The County also has a further power to engage a tax levy for the same purpose, pursuant to 55 ILCS 5/5-21001(8), upon submission of the tax levy question to the voters for that purpose. The "tax levy power" was specifically written into the Counties Code at some point after the Stephenson County nursing home was built and prior to the 1985 amendment that added the requirement that a nursing home built by publicly voted referendum could only be sold by publicly voted referendum. Defendants posit that this means the Legislature meant the phrase "if the home was erected after referendum approval by the voters" was only to apply to a nursing home erected as a result of a publicly voted tax levy as set forth in Subsection 8, and not to a nursing home that was built previous thereto by a bond issuance referendum.

But, there is no cross-reference in Subsection (9) to Subsection (8). There is no distinction in Subsection (9), as amended in 1985, as to what type of referendum by which the nursing home was built, be it by bond issuance referendum or tax levy referendum (which would thereafter mandate its sale only by publicly voted referendum). The Illinois Election Code defines "public question" as "any question, proposition or measure submitted to the voters at an election dealing with subject matter other than the nomination or election of candidates and shall include, but is not limited to, **any bond or tax referendum . . .**". 10 ILCS 5/1-3(15) (emphasis added). There is no further distinction or definition as to the meaning of "referendum" in the Election Code, including within Article 28, which deals specifically with public questions.

There is no logical rendering of Subsection 9 that would dictate that "referendum" was only a reference to the tax levy power granted in Subsection 8. The Legislature could have readily defined or restricted the meaning of "referendum" when it amended the statute, but they did not. There is absolutely nothing presented to the Court that would allow a construction of the term "referendum" as used in the applicable statute other than that it refers to a nursing home built as a result of any public referendum, be it bond issuance or tax levy or otherwise.

As a result, the Court finds, as a matter of law, that the language in Subsection 9 stating ". . . if the home was erected after referendum approval by the voters of the county" includes the type of bond referendum issued by Stephenson County in 1970 whereby the nursing home was thereafter erected.

Retroactivity of Statutory Amendment

Defendants posit that the 1985 statutory amendment - whereby the sale of a county owned nursing home, erected as the result of a public referendum, can only be authorized by the voting public - does not apply to the sale of the Stephenson County nursing home. The argument is that the statutory amendment in 1985 was intended to only apply to nursing homes erected after its enactment, and the 1985 statutory amendment in this regard cannot be applied in this case because that amendment was prospective in effect only, and because it was not made to apply retroactively, and, because the Stephenson County nursing home was already physically erected at the time of the 1985 amendment, the pre-existing law (that allowed the County Board to sell the nursing home upon 2/3rds vote) is what applies to the Stephenson County nursing home in 2025. There is nothing in the statute itself which supports a rendering that the 1985 amendment only applied to nursing homes built after the effective date of the amendment. In fact, that is the precise reason why the "temporal reach" issue is being touched upon by the parties. If the statute had said that it only applies to buildings erected after its effective date, this case would be a non-starter. The 1985 amendment does not say that - the amendment in 1985 states that if the nursing home **was built as a result of a public referendum**, it cannot then be sold except by public referendum. The change in the law in 1985 only changed how a nursing home, erected by referendum, could be sold in the future, and it did not change the law in any way as to the acquisition or building of a nursing home. The question is not whether the 1985 amendment applied only to nursing homes built in the future, but whether or not the amendment applied to nursing homes built in the past. Both parties spent

significant effort discussing the "temporal reach" issue, or, in other words, the retroactive and prospective application versus prospective only application of a new law or statutory amendment under Illinois law, and its application to this case. But, the doctrine has no application to this case.

There is a body of Illinois common law addressing the issue of "temporal reach of a new statute" when that statute does not expressly state its temporal reach. The issue is whether a newly enacted statute or statutory amendment applies only prospectively as opposed to when it applies both retroactively and prospectively. The analysis is invoked only when the statute does not set forth its temporal reach, and only then in determining if the new law applies to pre-existing cases or causes of action. Prior to 1996, Illinois common law on the issue was far short of consistent. In *First of America Trust Co. v. Armstead*, 171 Ill 2d 282 (1996), the Illinois Supreme Court attempted to adopt a definitive approach to the issue. Then, 5 years later, the Illinois Supreme Court, in issuing its opinion in *Commonwealth Edison Co. v. Will County Collector*, 196 Ill 2d 27 (2001), changed the analysis to be applied to the issue to correspond with the methodology employed by the United States Supreme Court set forth in *Landgraf v. USI Film Products*, 511 U.S. 244 (1994). For purposes of this Order, the analysis will be referred to as the "Landgraf Analysis". The application of the Landgraf Analysis was the focus of the parties' arguments as to the retroactive and prospective versus prospective-only application of the statutory amendment in this case - specifically, the statutory amendment in 1985 which stated that any nursing home built by way of referendum can only be sold by way of public referendum, and not by way of the former rule, which would have allowed its sale by 2/3rds vote of the County Board.

But, the Landgraf Analysis simply has no application to this case. As stated above, the analysis is only applied in regard to pre-existing cases or causes of action. The best manner to explain its appropriate application, and when its invocation is inapposite, is by example.

Scenario #1: A County owned nursing home is built in 1971 after a public referendum authorized issuance of bonds specifically for that purpose. At that time, the law stated that it can thereafter be sold by a 2/3rds vote of the County Board. The Nursing Home is sold by 2/3rds vote of the County Board in 1980. In 1985, the statute is amended to say that such nursing homes can only be sold by vote on a public referendum. This law cannot be applied retroactively to a fully completed sale, so there is no need to

employ a Landgraf Analysis. In the criminal context, retroactive application in that circumstance would be an illicit "ex post facto" law, and in the civil context, the retroactive application to overturn the sale of the nursing home would constitute a clear due process violation. In this scenario, the act was already totally completed under the auspices of the prior law, and there is no going back. This is not the situation presented by the case at bar, since the sale of the nursing home was undertaken 40 years after the statutory amendment in question.

Scenario #2: A County owned nursing home is built in 1971 after a public referendum authorized issuance of bonds specifically for that purpose. At that time, the law stated that it can thereafter be sold by a 2/3rds vote of the County Board. The Nursing Home is sold by 2/3rds vote of the County Board in 1980. At the time of the vote and sale of the nursing home, the law says that any alleged impropriety in the notice or voting procedures by the County Board must be brought by filing a complaint in the Court within 90 days. That 90 days passes with no complaint filed. Then, in 1981, the law is changed to say that any alleged impropriety in the notice or voting procedures by the County Board must be brought by filing a complaint in the Court within 2 years. A complaint alleging improprieties in the notice and vote of the County Board is then filed within that two-year period. Did the 1981 amendment apply retroactively to "resurrect" the cause of action? This is a Landgraf Analysis situation, and is represented by the Court's invocation of the doctrine in, by way of example, *M.E.H. v. L.H.*, 177 Ill 2d 207 (1997), and *Henrich v. Libertyville High School*, 186 Ill 2d 381 (1998). But, this is not the situation presented in this case.

Scenario #3: A County owned nursing home is built in 1971 after a public referendum authorized issuance of bonds specifically for that purpose. At that time, the law stated that it can thereafter be sold by a 2/3rds vote of the County Board. In 1984, the County Board votes to sell the Nursing Home by 2/3rds vote of the County Board. However, there is no contract signed to sell the nursing home. The nursing home is "put on the market" for sale, but before a sale contract is signed, there is a lawsuit filed challenging the notice and voting procedures employed by the County Board and alleging the deficiencies defeat the validity of the vote to sell the nursing home. While that case is pending in Court, the Illinois legislature changes the law to say that the Nursing Home can only be sold by way of a referendum approved by majority vote of the County voters. Does the new law apply to this pending case? That is the classic version of the need to address the "temporal

reach" of a new enactment and the invocation of a Landgraf Analysis. This is clearly not the case presented here, when the law changed in 1985 and the sale of the Stephenson County nursing home was attempted 40 years after the law changed.

Scenario #4: A County owned nursing home is built in 1971 after a public referendum authorized issuance of bonds specifically for that purpose. At that time, the law stated that it can thereafter be sold by a 2/3rds vote of the County Board. In 1985, the statute is amended to say that nursing homes that are erected as a result of a public referendum can only be sold by vote on a public referendum. The County Board attempts to sell the nursing home in 2025 - 40 years after the law was changed in this regard - by 2/3rds vote of the County Board, and not by way of a majority vote of the Stephenson County voters. This is the scenario presented in this case. There is no reason to discuss whether or not the 1985 statutory amendment applied retroactively under the rubric of the "temporal reach" of that 1985 amendment. Who cares if it applied retroactively? The vote and sale of the nursing home under scrutiny here was 40 years after the law was enacted and became effective.

Defendants seem to argue that they were operating under the old law since 1985 because the nursing home was built prior to the 1985 statutory amendment. The argument is wholly unrelated to a "Landgraf Analysis" as to the temporal reach of the 1985 amendment. The only way that the Defendants could argue that the 1985 amendment has no application to them under these circumstances is because:

1. Stephenson County was somehow "grandfathered-in" or "legacied". This would require a specific savings clause in the statutory amendment, such as: "any nursing home built prior to the effective date of this amendment is exempt from the public vote requirement of this amendment and the County may be continually hereafter allowed to sell the nursing home by 2/3rds vote of the County Board". No such specific savings clause exists in the statutory amendment in question.
2. The 1985 enactment somehow constituted an unconstitutional "taking" or is unconstitutional-as-applied based on some other constitutional-infirmity-based theory. The County has not made any such argument in this case, and for good reason - it would not work.

Instead, the County appears to be arguing that they had a vested right to sell the nursing home on a 2/3rds Board vote in 2025 because

that was what the law said when they built the nursing home in 1971. As the *Landgraf* case indicates, a statute does not impermissibly apply "retroactively" simply because there were actions taken prior to its enactment that were based on the state of the law pre-dating the change in the law, or because expectations based on the prior state of the law are upset by the change in the law. The operative acts of import here are the County Board voting to sell the nursing home and the selling of the nursing home, and those acts happened in 2025. The acts preceding the 1985 statutory amendment - acquiring the property, construction of the building, and holding title to the property - were not changed or effected by the 1985 amendment. One cannot argue that a law passed in 1985 and in existence for the next 40 years does not apply to me or my situation in 2025 simply because I acquired my property under the premise that someday I could sell it one way, but the law thereafter changed how I could sell it. There would have to have been a specific exemption in the new enactment which allowed that person or entity to operate under the old law even after the effective date of the new law, or an argument that the new law as applied to that person or entity is unconstitutional-as-applied for some other reason. It certainly has nothing to do with a "temporal reach" analysis.

By way of further example, say John acquires ownership of a firearm in 1970. At that time, there are no legal restrictions on who he thereafter may sell that gun to. In 1985, the Illinois legislature creates a law that says, after the effective date of the Act, you cannot sell a gun to an Illinois resident unless the buyer has a FOID card. The law does not provide any type of a savings clause or "grandfathering" clause, but it clearly states it relates only to gun sales after its effective date (its "temporal reach"). In 2025, John decides to sell his gun to Mary, who does not have a FOID card, and when he is confronted with liability for the sale, John argues that the 1985 law does not apply to him because: 1) the law was written to apply only to guns acquired by the Seller after its effective date; and, 2) when he acquired the gun in 1970, he could sell it to whomever he wanted, and you cannot strip that right from me. As in the case at bar, the first argument is easily dispatched - the law does not say it only applies to guns acquired after its enactment, and so it applies to all gun sales after its enactment, regardless of when the Seller acquired the gun. The second basis of John's argument is that to impress the 1985 amendment on him is to retroactively apply the law illegitimately because when John acquired the gun in 1970 his rights to sell it could not be abridged by any subsequently enacted law. Whatever argument John could set forth to support his position in this regard, it sure would not be a "Landgraf Analysis". The law clearly stated that it

applies prospectively only. And, by the same token, if the 1985 law did not say it applies only to future gun sales, the inapplicability of a Landgraf Analysis is still the same - you can presume it only applies prospectively to the act that it prohibits, that being John's sale of his gun to Mary in 2025. The same reasoning applies in this case - the Defendants cannot argue that the 1985 law that changed how the Nursing Home could be sold would have an inappropriate retroactive application to the Defendants, because the action that the law refers to was taken by the Defendants in this case in 2025, not in 1971.

The Court finds, as a matter of law, that the requirement of a public referendum to sell the Stephenson County nursing home applies to any sale of that nursing home after the effective date of P.A. 84-610 - i.e., September 19, 1985.

Plaintiff's Summary Judgment Motion

The amendment to this statute in 1985 clearly applied to the sale of the Stephenson County nursing home in 2025, regardless of whether the Stephenson County nursing home was built prior to 1985, and regardless of the state of the law when the bond referendum was issued and the state of the law when the nursing home was built. As indicated herein-above, the resolution of a summary judgment request is not a matter committed to the trial court's discretion - either the movant is entitled to judgment as a matter of law or the movant is not so entitled. *Yusuf v. Village of Villa Park*, 120 Ill.App.3d 533, 540 (2nd Dist., 1983). As also set forth herein-above, the choice presented to the Court is strictly binary, and there is no viable "third choice". Either it is that the County owned nursing home could be sold by a 2/3rds majority vote of the County Board, or it instead could only be sold upon the affirmative vote of a majority of the Stephenson County voters by way of a public referendum at an election.

There is little need for further elaboration on this front. The Court has made explicit findings herein-above that the requirement of a publicly voted referendum to sell the nursing home applies to the Stephenson County nursing home and it applies in calendar year 2025. There is no other manner in which the Stephenson County nursing home can be lawfully sold or disposed of other than by the majority votes of the Stephenson County voters pursuant to a referendum for that purpose. As a result, Plaintiffs are entitled to summary judgment as to their declaratory judgment cause of action.

Conclusion

As stated elsewhere herein, the Court can only rule on the declaratory judgment portion of Plaintiffs' Complaint. The Court has never been presented with the very contract to sell the nursing home to the third-party buyer which the Plaintiffs are, ostensibly, seeking to "undo". The Court does not know anything about the substance of the County Board vote relative to this purported sale of the nursing home, and so does not know anything about the viability of any current leasing provisions in the contract, if any exist, and the Court does not know if there are leasing contingencies in the contract that would bring it to "lawful status" if the sale of the building itself was deemed to be invalid (a possibility which has been hinted at by the attorneys in open Court).

Decretal Terms

IT IS, THEREFORE, ORDERED, ADJUDGED, AND DECREED:

1. **Defendants' Motion:** Defendants' Motion for Summary Judgment is denied.
2. **Plaintiffs' Motion:** Plaintiffs' Motion for partial Summary Judgment is granted, in the particulars as follows.
3. **Court Declaration:** The Court hereby decrees that the Plaintiffs' are entitled to judgment as to the declaratory relief count in Plaintiffs' complaint, that being specifically that the Stephenson County nursing home can only be sold by a majority vote of the Stephenson County voters properly presented to them at an election by way of referendum, and the County Board cannot effectuate a sale of the Stephenson County nursing home by way of County Board vote alone.
4. **Withholding of Judgment:** The Court's declaration as set forth in paragraph 3 above constitutes the "law of the case", but the Court is withholding entry of Judgment upon the Declaratory Relief Count of Plaintiffs' operative Complaint until such time as the parties have opportunity to address the substance and timing of a final Judgment entry thereupon.

5. **Procedures:** The Clerk of Court shall immediately provide a copy of this Order to Attorneys Scott Berndtson, James Wargo, Alena Jotkus and Carl Larson. The case remains on call per the prior setting on December 29, 2025, at 1:30 PM, for status.

Dated: December 22, 2025



Judge David M. Olson