For the International Municipal Lawyer's Association - IMLA's 5 things to know for April 5th

1. From around the country and for code enforcement enthusiasts the Iowa Supreme Court has made it difficult to enforce provisions of a non-conforming use provision against a mobile home park. Tip of the hat to Iowa State Chair Eric Goers for sending this along. The city had tried to prove that the owner had exceeded the non-conforming use and that there were health and safety issues necessitating shutting the use down. The court concluded that the city presented insufficient proof of the fire safety issues. Yesterday, I reported on the tragic fire and recommendations flowing from it, here the court concluded safety concerns were insufficiently proved, but at whose risk?

   https://www.iowacourts.gov/courtcases/414/embed/SupremeCourtOpinion

2. In Missouri a church sought to get a variance to convert its monument sign to a digital sign. The Board said no. The Supreme Court of Missouri affirmed the Board but on different grounds. Finding that the sign retained its status as a monument sign the court concluded that the Board properly denied the request to add digital messaging. The Missouri court discusses the concepts for non-use variances and what provides a sufficient criterion for "practical difficulty" concluding that the church did not meet its burden in showing a practical difficulty as defined in zoning law. The court provides a nice narrative of what some courts require when analyzing zoning variances.

   https://www.courts.mo.gov/file.jsp?id=124307

3. Back to Iowa, there the Supreme Court found that an immunity statute protected a city against a claim of nuisance where a homeowner asserted that the city by diverting storm water into the basement of her home had created a nuisance. This is a really interesting area of the law and I think varies around the country as to whether a local government is immune for nuisance and also gets into the question of liability for design defects under the "state of the art" theory of governmental liability. For example, my recollection of Maryland law makes a local government liable for nuisance and while immunized for state of the art design defects knowledge that the design is defective translates to liability for improper maintenance under many situations.

   https://www.iowacourts.gov/courtcases/20/embed/SupremeCourtOpinion

4. Yesterday in a major decision, the 8th Circuit concluded that a company providing Internet and phone service was not a "cable provider" and therefor did not need a cable franchise agreement. The existing cable company sought to have its competitor for Internet get a franchise so it could demand parity under Iowa law. This case with

folks “cutting the cord” will likely demand attention to focusing on how cities and counties franchise use of the rights of way for Internet services both wired and wireless.

http://media.ca8.uscourts.gov/opndir/18/04/163696P.pdf

5. In NYC, that state’s Supreme Court concluded that a person suing under the state’s comparative fault law need not establish their own lack of negligence to obtain summary judgment. Apparently, this is an issue that the state’s Supreme Court says is perplexing to courts around the country. To me what I found perplexing is New York law that provides that certain local government workers can sue their employer and co-employees for negligence in the course of their work and that Workers Compensation exempts these employees from the general prohibition against such suits. Hats off to the great team of attorneys in New York City Corporation Counsel’s office who must defend these cases.

https://www.nycourts.gov/ctapps/Decisions/2018/Apr18/32opn18-Decision.pdf

It’s not too late, but it’s going to be soon to join over 350 of your colleagues at the IMLA Seminar and Section 1983 defense program. Mid-Year Seminar, Get more from IMLA by joining. Not a member? Contact us. Sign up at www.imla.org . Have a great day and make it an inspirational one.