Land Court Upholds Board of Zoning Appeal

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Land Court Upholds Board Of Zoning Appeal's Finding That Developer Is Bound By Agreements Entered Into By Prior Owner

In Monogram Residential 22 Water Street Project Owner, LLC v. City of Cambridge Board of Zoning Appeal, C.A. No.16 MISC 000631 (MDV) (Mass. Land Ct. August 14, 2017), Monogram Residential 22 Water Street Project Owner, LLC ("Monogram"), the developer of a multifamily housing project at 22 Water Street in Cambridge (the "Project"), appealed a Cambridge Board of Zoning Appeal ("BZA") decision finding that Monogram installed up lights on the Project that violated the terms of the Special Permit, and therefore the lights must be removed.

Background

In February 2010, Catamount Holdings LLC ("Catamount"), the original developer of the Project, applied for special permits to develop a three-building, 392-unit project in the North Point Planned Unit Development ("PUD")-6 District of Cambridge. As a part of the special permit application process, Catamount submitted a Final Development Plan on June 1, 2010. The Final Development Plan included a Screening Narrative, detailing the architectural screening for mechanical equipment on the site, and which specifically stated "[t]here will be no up lighting or other lighting of the screens or roof of the building." Up lighting is otherwise allowed as of right in the North Point PUD-6 District. On June 15, 2010, the Cambridge Planning Board issued a final decision granting Catamount its requested special permits (the "Special Permit Decision"). No one appealed the 2010 decision.

In December of 2012, Catamount sold the unbuilt but permitted project to plaintiff, Monogram. In December of 2014, Monogram wrote a letter to the Cambridge Building Commissioner ("Building Commissioner"), stating that it wished to install roof screen lighting and that such lighting is allowed by right in the North Point District. However, Monogram failed to mention in the letter the Special Permit Decision or the agreement not to install up lighting contained in the Final Development Plan. The Building Commissioner responded in May 2015, stating "I discussed with . . . staff, and determined that the lighting as proposed is allowed." Monogram installed the lighting. In January 2016, after turning on the lights, neighbors complained to the City. At that point, someone discovered the Screening Narrative and informed the Building Commissioner, who ordered Monogram to remove the lights. Monogram appealed the Building Commissioner's decision to the BZA, which similarly found the up lights violated the Special Permit Decision and ordered Monogram to remove them. Monogram appealed to the Land Court.

The Decision

The Court upheld the BZA's finding that the up lights violated the terms of the Special Permit Decision, holding that Monogram is bound to all terms of the Final Development Plan, including the Screening Narrative that banned such lighting, because Condition #1 of the Special Permit Decision required that "[a]ll use, building construction, and site plan development shall be in substantial conformance with the Final Development Plan." However, the Court overturned the part of the decision requiring Monogram to remove the lights. Instead, citing to *Chambers v. Bldg. Inspector of Peabody*, 40 Mass.App.Ct. 762, 769 (1996), the Court held that under the circumstances, because up lights are allowed by right in the District, Cambridge had to give Monogram an opportunity to apply for an amendment to the Special Permit Decision through the Planning Board to keep the lights in place. The Court also reminded the parties that denial of a requested amendment is subject to judicial review and may be overturned if based on arbitrary, capricious, or legally untenable grounds.

The Takeaway

A developer who purchases a permitted project will be presumed to be subject to all agreed-to conditions of the permit granted to its predecessor, whether harmful or helpful. However, where an agreement in a decision is more restrictive than the applicable zoning, as was the case here, the municipality may be vulnerable to a challenge by the subsequent developer to overturn the more restrictive agreement, so long as the developer follows the correct procedure (in this case, applying for an amendment through the Planning Board rather than sending a letter to the Building Commissioner).

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