

Law of the Land - Real Estate Litigation Newsletter

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CASES OF NOTE

WHEN IT COMES TO SHORT-TERM RENTALS, PROPERTY OWNERS BEWARE *Styller v. Zoning Bd. of Appeals of Lynnfield*, 487 Mass. 588 (2021)

In *Styller v. Zoning Board of Appeals of Lynnfield*, the Massachusetts Supreme Judicial Court dealt a blow to the business of short-term rentals. The Court held that occasional, short-term rental of a private single-family home was not a permitted use under the Lynnfield zoning bylaw because the short-term, transient nature of the rentals was inconsistent with the zoning purpose for single-resident zoning districts.

Section 4 of the Town of Lynnfield (the "Town")'s zoning bylaw prohibits any property use not specifically authorized. During the relevant period, Section 4.1 of the Town's zoning bylaw laid out permissible principal, additional, and accessory uses of properties located in single-residence districts. Principal uses included use as a "one family detached house, with not more than one such house located on any lot." With approval of the zoning board of appeals of Lynnfield, certain "additional uses" were permitted, including use as a "tourist home, boarding or lodging house."

The property at the center of the dispute consisted of a five-bedroom single-family house, located on three acres of land, in a single-residence zoning district in Lynnfield, Massachusetts. The plaintiff lived on the property with his family and successfully offered it for short-term rentals through Internet-based platforms on multiple occasions between 2015 and 2017. During one of these short-term rentals, a shooting incident left an individual dead at the plaintiff's property. Following this incident, the Town's building inspector informed plaintiff that use of his property for short-term rentals constituted either use as a hotel or use as a lodging or rooming house without necessary prior authorization in violation Section 4.1.1(3) of the Town's zoning bylaw, and therefore ordered him to cease and desist offering the property for rent. Plaintiff appealed the decision to the Zoning Board of Appeals, which upheld the building inspector's decision. Plaintiff thereafter filed a complaint in Land Court contesting the Board's ruling. The Land Court upheld the Board's decision and concluded that plaintiff's short-term rental use of the property constituted an additional use because it was functionally equivalent to use as a "tourist home" or "lodging house" under Section 4.1.1(3). As plaintiff lacked the Board's authorization for that use, the Land Court concluded that

his short-term rental use violated the bylaw as it existed when plaintiff began such rentals. Plaintiff appealed the Land Court's ruling, and the SJC transferred the case on its own motion.

The SJC affirmed the Land Court's holding on different grounds. First, the SJC addressed the Town's argument that plaintiff lacked standing because he sold the property after the trial in the Land Court but before judgment entered. As standing is tested at the time an action commences, the SJC concluded that plaintiff's sale of the property after the trial in the Land Court did not impact his status as a person aggrieved by the Board's decision. Moreover, it concluded that, per Mass. R. Civ. P. 25(c), an original party may continue a lawsuit even after transferring his or her interest in the disputed property provided that the transferee of the interest is not, via motion, substituted. In connection with its holding on standing, the SJC also held that that case was not moot because the "viability of short-term rental use of property in the context of existing zoning regulations [is] one of public importance" because it is "primarily a matter of statutory [or, in this case, zoning bylaw] interpretation, not dependent on the facts of the particular case."

The SJC agreed with plaintiff that the short-term rental use was not an unauthorized "additional" use. The Court concluded that the property was not used as a "lodging house" or as a "tourist home" because renters were given exclusive possession of the entire property and the owner did not remain on the property during the rental period. Nonetheless, the Court held that occasional use of the property for short term rentals was not a permissible primary use as a one family detached house because such use is inconsistent with the zoning purposes of the single residence zoning district in which it is situated, which is to preserve the residential character of the neighborhood. Deferring to the Board's interpretation of its own zoning laws, the SJC concluded that the Board could reasonably determine that use of a "one family detached house" in a "single residence district," as defined in the Town's applicable zoning bylaw, reflects a measure of permanency inconsistent with more "transient" uses.

Although the Court's holding is limited to the interpretation of a particular zoning bylaw, property owners renting their homes as short-term rentals outside of Lynnfield should be cognizant of express or implied limitations on such uses set out in their local zoning bylaw.

APPEALS COURT REAFFIRMS OPPONENTS' LACK OF STANDING TO CHALLENGE BRA URBAN RENEWAL DECISIONS

***Katsiane v. Boston Redevelopment Authority*, Massachusetts Appeals Court No. 20-P-619 (July 23, 2021)**

In the seminal case of *St. Botolph Citizens Comm., Inc. v. Boston Redevelopment Auth.*, 429 Mass. 1 (1999), the Massachusetts Supreme Judicial Court held that a project opponent lacked standing to challenge a decision of the Boston Redevelopment Authority (BRA) modifying an urban renewal plan in order to permit the development of new residential units. The Court's decision was premised upon the fact that the BRA's decision was made solely in its capacity as an urban renewal agency under G.L. c. 121B, which contains no explicit right of appeal. The Court held that the absence of an appeal right was a "legislative" and "intentional" choice, which must be respected.

The Appeals Court recently reaffirmed the *St. Botolph* decision and reasoning in *Katsiane v. Boston Redevelopment Authority*, Appeals Court No. 20-P-619 (July 23, 2021), an unreported decision issued under Appeals Court Rule 23.0. In *Katsiane*, the plaintiff filed a lawsuit seeking a declaratory judgment and a preliminary injunction in the Superior Court. His complaint challenged the BRA's decision to approve the sale of the historic Harriet Tubman House in the South End as part of a redevelopment project in the area subject to the South End Urban Renewal Plan, which was approved in 1965. The project is a "large project" subject to Article 80 of the Boston Zoning Code. At the time the case was filed, the BRA had approved the sale of the property to a developer who planned to demolish the House and construct a new mixed-use building that will include sixty-six new residential units.

The plaintiff alleged in his complaint that he lives in the neighborhood and had been using the social and other services provided by the House for thirty years. He also claimed that the proposed development violated a land disposition agreement and the deed for the property at issue, both of which required that land to be used only for "community use."

The BRA opposed the plaintiff's motion for a preliminary injunction and filed its own motion to dismiss based upon the plaintiff's lack of standing. The Superior Court agreed with the BRA and dismissed the case, citing *St. Botolph*. On appeal, the Appeals Court affirmed the Superior Court's decision. In so doing, the Appeals Court reaffirmed the *St. Botolph* holding and reasoning, and it held, notwithstanding any aggrievement that the plaintiff might suffer, that he lacked standing to appeal from the modification of the urban renewal plan by filing a suit against the BRA. The decision illustrates the ability of developers to dispose of certain challenges by project opponents at the initial stages of an appeal.

NEWS ALERT

EVICITION MORATORIUM EXPIRING

On May 5, 2021, Judge Dabney L. Friedrich of the U.S. District Court for the District of Columbia added to the growing number of cases invalidating the nationwide moratorium on evictions issued by the Centers for Disease Control and Prevention ("CDC") in response to the COVID-19 pandemic.

On September 4, 2020, the CDC issued the "Temporary Halt in Residential Evictions To Prevent the Further Spread of COVID-19" under § 361 of the Public Health Services Act. The CDC stated that a temporary halt on residential evictions was "a reasonably necessary measure... to prevent the further spread of COVID-19." The moratoriums applied to all residential properties nationwide and prohibited landlords from evicting tenants for nonpayment of rent. The CDC moratorium was initially set to expire on December 31, 2020, but was subsequently extended several times in light of the worsening spread of COVID-19 and the CDC's findings that evictions substantially contribute to the transmission of the virus. The moratorium is currently set to expire on July 31, 2021, in what the CDC stated was "the final extension of the moratorium."

In *Alabama Ass'n of Realtors v. United States Dep't of Health & Human Servs*, Judge Friedrich held that the CDC overstepped its authority by issuing a nationwide moratorium on evictions. Although

recognizing that COVID-19 has created a public health crisis, the Court nonetheless concluded that the CDC did not have authority under the Public Health Service Act to impose a nationwide eviction moratorium. Namely, the Court held that while the Act permits the CDC to issue and enforce regulations necessary “to prevent the introduction, transmission, or spread of communicable diseases,” CDC’s statutory authority is limited to specific sources of infection – animals and articles -- and does not extend to evictions.

Unlike prior rulings in other jurisdictions, the Court did not limit its ruling solely to the plaintiffs who brought the lawsuit and concluded that the moratorium must be set aside on a nationwide basis. The ban on the moratorium, however, was short-lived. Immediately after the ruling, the Department of Justice filed an appeal and an emergency motion for a stay of the ruling and its impact to avoid evictions pending appeal. The Court granted a temporary stay of the ban, and the U.S. Court of Appeals for the District of Columbia Circuit upheld the stay. The U.S. Supreme Court then upheld this decision with Chief Justice Roberts and Justice Kavanaugh joining with the Court’s three liberal Justices to keep the moratorium in place in light of the CDC’s plans to end it on July 31, 2021.

If you have a real estate litigation question or business concern, we invite you to reach out directly to any member of our [Real Estate Litigation Group](#).

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