

LEGAL AND REGULATORY NOTES, OCTOBER 2012

Vermont Supreme Court Reinforces JAM Golf

The Vermont Supreme Court reiterated its prior holding in *In re Appeal of JAM Golf, LLC*, that municipalities must adopt clear land use regulations. In that landmark case, the Court ruled that “Zoning ordinances must ‘specify sufficient conditions and safeguards’ to guide applicants and decisionmakers. We will not uphold a statute that ‘fail[s] to provide adequate guidance,’ thus leading to ‘unbridled discrimination’ by the court and the planning board charged with its interpretation.” Clear land use regulations not only help land use officials who apply regulations, but also property owners who need to understand the limits on the use of their property. *In re John Toor, Margaret Toor and Toor Living Trust NOV, 2012 VT 63* comes approximately four years after *JAM Golf* wherein Vermont municipalities were put on notice that “[z]oning ordinances must ‘specify ... sufficient conditions and safeguards’ to guide applicants and decisionmakers.” The *Toor* case demonstrates that land use regulations must plainly state the types of development a municipality wants to limit or control so that landowners know what they can or can’t do with their property.

This case comes from Grand Isle, a popular lakeside summer vacation spot, where approximately 240 of the housing units are considered seasonal, recreational, or occasional use. John and Margaret Toor’s home fell into this category. In the summer of 2009, the Toors began renting their home. Their tenants used the property in substantially the same way as the Toors – for vacations, entertaining, and various celebrations. In September 2009, the Grand Isle administrative officer issued a notice of violation alleging rental of the property constituted a change of use from a single family dwelling without a zoning permit.

The property owners appealed the notice of violation to the Grand Isle Development Review Board, then to the Environmental Division of the Superior Court (E-Court), and finally to the Vermont Supreme Court. The appellate authority of both the DRB and the E-Court upheld the administrative officer’s determination, however each had its own interpretation of why the use was no longer a single family dwelling unit use. “[T]he [E-Court’s] view was that the violation occurred because of the income production, through numerous financial arrangements, and the short-term rental periods, which created impermanence.” The Supreme Court rejected this argument, finding the tenant used the house the same way as did the homeowners – as a single family dwelling unit, a permitted use in the district – and that for the period of time that each tenant occupied the house it constituted a single household regardless of the length of tenancy. The tenants could allow guests to stay overnight, just as the homeowners did. As for the intermittent income producing nature of the rental property, the Court determined that the district allowed for commercial uses, and the permitted use (single family dwelling unit) didn’t “imply a prohibition” on renting the dwelling unit.

The Supreme Court held that Grand Isle’s regulations, as written, did not limit the landowners’ ability to rent their home. In doing so, the Court clarified that interpreting local land use

regulations requires “narrow construction and the need for landowners to be able to ascertain the line between proper use of their property and illegal use.” If the town wanted to prevent this use and its potential associated impacts, the ambiguity of the regulation must be resolved by “legislative action to create workable solutions in areas of broad general standards” and not by the judiciary.

To read the Vermont Supreme Court’s decision, go to <http://info.libraries.vermont.gov/supct/current/op2011-085.html>

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