

INTENT AND PLAIN MEANING HELP CLARIFY ZONING AMBIGUITIES

The Vermont Supreme Court reversed a decision by the Environmental Court that a Town of Georgia zoning ordinance was so ambiguous it could not be construed as requiring a permit to convert a camp to a single family dwelling. *In re Appeal of Bernard Roy and Marjorie Gobrecht-Roy*, Vt. No. 2000-012 (September 2000).

The Town of Georgia's ordinance expressly distinguished between two types of residential uses within a lakeshore district – camps, which are permitted uses, and single family dwellings, which are conditional uses. The Town became aware that the owner of a property in this district was seeking to convert a camp to a year round single-family residence. The Town informed the property owner that a conditional-use permit was required for the conversion. The property owner applied for a conditional-use permit, variance, change-of-use approval and sewer upgrades. The Town denied the applications and the property owner appealed to the Environmental Court.

The Environmental Court reversed the Town's decision on the grounds that the ordinance did not adequately distinguish between a camp and a single-family dwelling. The Environmental Court's decision was based on the fact that while the ordinance defined a camp, it did not expressly state that camps must be used for seasonal or temporary living and it did not define a single-family dwelling.

The Vermont Supreme Court confirmed the legal principles that ambiguities in regulations are to be resolved in favor of the trial court's construction of zoning regulations unless it is clearly erroneous, arbitrary, or capricious. Notwithstanding these stringent standards, the Court held that the Environmental Court's interpretation of the Town's zoning ordinance was "hypertechnical" and "clearly erroneous."

Specifically, the Court pointed out that, when interpreting zoning regulations, the purpose is to implement the legislative intent of the ordinance and words in the ordinance are to be given their plain and ordinary meaning. The Court concluded that the ordinance tracked the common understanding that camps are to be used for seasonal or temporary living. Accordingly, the legislative intent of the ordinance is clear and unambiguous – structures that are to be used year round in the lakeshore district require a conditional-use permit.

One lesson to be learned from this decision is that ordinances that convey the clear intent of the local legislative body will be upheld even if each element of the ordinance is not defined in detail. While towns should be as clear as possible when writing ordinances, if challenged, the courts must look to the legislative intent and plain meaning of the ordinance before dismissing the ordinance based on a technicality.

VLCT News, October 2000