MUNICIPAL AUTHORITY TO REGULATE STATE BUILDING PROJECTS CURBED

The Vermont Supreme Court recently clarified the extent to which local zoning authority may be exercised over certain state facilities and institutions under 24 V.S.A. § 4409(a). *In re Appeal of Buildings and General Services*, 2003 Vt. 92 (Oct. 10, 2003). This case is important to municipalities because it is the first time that the Court has interpreted the meaning of the first sentence of § 4409(a) and its impact on municipal zoning authority. The Vermont League of Cities and Towns filed a brief of *amicus curiae* ("friend of the court") in support of the Town's interpretation of the case.

The statutory language interpreted by the Court is as follows: "*Unless reasonable provision is made for the location of any of the following in a bylaw … the following uses may only be regulated with respect to size, height, bulk, yards, courts, setbacks, density of buildings, off-street parking and loading facilities and landscaping or screening requirements…(2)." 24 V.S.A. § 4409(a).*

The primary issue addressed in *Appeal of Buildings and General Services* is whether municipal zoning authority over state institutions and facilities is always limited to the items specifically listed in 24 V.S.A. § 4409(a); or if such authority can be exercised without limitation so long as the local bylaw makes "reasonable provision" for the location of state or community owned and operated institutions and facilities.

The project at issue in *Appeal of Buildings and General Services* involved a state-owned correctional facility and a maintenance facility. The Department of Buildings and General Services (BGS) applied for a zoning permit to replace the maintenance facility's one-bay garage with a three-bay garage. The zoning administrator determined that site plan review by the planning commission and a conditional use permit from the zoning board of adjustment were required. BGS did not appeal the zoning administrator's determination and obtained the necessary approvals. BGS did, however, appeal the conditions the zoning board of adjustment placed on the conditional use permit to the Environmental Court.

On appeal, BGS argued that the Town exceeded its authority by regulating the *use* of the project and by requiring the project to conform to all town zoning requirements, in addition to the requirements relating to size, height, bulk, yards, courts, setbacks, density of buildings, off-street parking and loading facilities, and landscaping and screening contained in 24 V.S.A. § 4409(a).

The Town, on the other hand, asserted that 24 V.S.A. § 4409(a) allows a municipality to regulate state institutions and facilities to the same extent as private land uses so long as a municipality's bylaws make reasonable provision for the location of state institutions and facilities. The Town argued that a municipality's zoning authority is limited to the specific items listed in 24 V.S.A. § 4409(a) only when the municipality fails to make a reasonable provision for the location of such a facility.

Despite the Court's acknowledgement that "if we were to decide this case solely on the statutory language, the Town has the better side of the argument," it sided with BGS and held that municipal authority to regulate state facilities through local zoning is limited to those items specifically listed in § 4409(a), regardless of whether a town's bylaws make "reasonable provision" for the location of such projects or not.

In reaching its conclusion, the Court relied heavily on the legislative history of the statute. This revealed that the "unless reasonable provision is made for the location of " language was merely added to the statute to allow municipalities to regulate the location of a state-owned and operated facility *in addition to* size, height, setbacks, etc., as provided for in the statute and was not added to allow municipalities unlimited zoning authority over state projects.

In re Appeal of Buildings and General Services reaffirms that municipalities can exercise local zoning authority over state facilities and institutions with respect to location, size, height, bulk, yards, courts, setbacks, density of buildings, off-street parking and loading facilities, and landscaping and screening requirements. This case also clarifies that even if a bylaw reasonably provides for the location of a state facility and institution, a municipality's zoning authority is still restricted to the regulation of location, size, height, bulk, yards, courts, setbacks, density of buildings, off-street parking and loading facilities, landscaping and screening requirements.

It is also important to note that although *In re Appeal of Buildings and General Services* addresses municipal zoning authority with respect to "state-owned and operated institutions and facilities," the Court's decision also applies to public utility power generating plants and transmission lines; public and private schools; churches, convents, and parish houses; public and private hospitals; regional solid waste management facilities; and hazardous waste facilities. 24 V.S.A. § 4409(a)(1)-(7).

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