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NEIGHBOR WARS

SJC Ruling Won't Solve State's Zoning Appeals Muddle

Legislative Overhaul Of System Needed To Halt Frivolous Claims



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SPECIAL TO BANKER & TRADESMAN

A recent decision by the Massachusetts Supreme Judicial Court (SJC) involving battling neighbors overlooking Nantucket Sound is being hailed as having the potential to reshape the landscape for builders and developers in Massachusetts.

As much as I wish it were so, this interesting decision hardly represents a watershed moment in the ongoing tragedy that is the state's zoning appeals morass. For what seems like generations, the current zoning appeals process, through no fault of the courts, has permitted disgruntled abutters to delay worthy building and development projects that can improve lives, create jobs and pump money into our state's economy.

The *Kenner v. Chatham Zoning Board of Appeals* decision – while very important in its discussion of what constitutes “aggrievement” and “harm” – is only a first step toward critically needed reform. Perhaps the decision is the SJC's way of saying, “Enough!” in the tedious and expensive zoning appeal process which most of us in the development business have come to loathe. This case took about six years and, no doubt, a mountain of legal fees.

The facts of the case are not complicated. In 2006, a special per-

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mit was granted by the Chatham Zoning Board allowing the demolition and reconstruction of a single-family home. The new structure would be seven feet taller than the previous structure.

The board found no substantial detriment to the neighborhood from the increase in the height of the structure. People living across the street from the structure to be reconstructed objected, however, arguing that because the new home would block some of their view of the ocean, they were “aggrieved” under Massachusetts law and, thus, had legal standing to appeal. The Land Court denied their claim, finding minimal impact, and dismissed the suit.

The state Appeals Court overturned the Land Court decision, stating that even “minimal impact” would allow the appellants entry to the courthouse. Finally, the SJC reversed the Appeals Court decision, upheld the Zoning Board's

decision to permit demolition and rebuilding, and found that “[a]ggrievement requires a showing of more than minimal or slightly appreciable harm.”

Zoning Reform Needed

On its face, this SJC decision should be applauded. It recognizes the fact-finding authority of local zoning boards and could help the Land Court shake out nuisance cases from its docket. This decision could also build a higher hurdle for plaintiffs claiming they have been “aggrieved” by a zoning board decision. The question is: Will it ward off new, legally unfounded cases?

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legitimately protected concerns. Many of us have witnessed a zoning appeal brought only for the purpose of stalling a project in the hope that a developer would walk away or surrender his right to purchase and develop a property rather than go through the costly and time-consuming process now required to fight for it. There are also appeals commenced solely to leverage a developer into "buying off" abutters claiming to be aggrieved.

An important follow-up step could be for the Massachusetts Legislature to file a simple amendment to the appeals provision of the zoning statute to grant judges the power to order appellants to pay all court costs when the appeal is determined to be frivolous. This could

be determined, in the context of zoning, when an appellant suffers no real aggrievement. Although frivolous action laws currently exist, they are rarely brought to bear and are seriously needed in the zoning arena.

Another possible solution could be for the Legislature to craft a statutory process for an administrative Zoning Appeals Committee or a division of the Land Court designed strictly to hear or screen zoning appeals. This would require funding; however, when balanced against current costs, it may prove economical.

Deterrents to frivolous zoning appeals are needed now because of the impact they could have on re-igniting the powerful economic engine that home sales, new home building and commercial develop-

ment represent. Despite the rebound of the stock markets and recent signs of a nascent recovery, our national, regional and local economies will improve only when consumers have jobs and buy new homes.

All of us who work in the development industry know that it is critical to the success of our economy to push for real zoning reform that would penalize, not reward, those who misuse or abuse the zoning appeal process for often baseless actions, or who delay the process for their own economic gain. ■

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