COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT

20-P-647

THOMAS F. WILLIAMS[1]

vs.

BOARD OF APPEALS OF NORWELL & others.[2]

MEMORANDUM AND ORDER PURSUANT TO RULE 23.0

In this appeal, we consider for the second time the question whether an undeveloped parcel of land in Norwell, which was created by a plan recorded in 1948 (locus or property), is protected as buildable under G. L. c. 40A, § 6, fourth par.

Plaintiff Thomas F. Williams seeks to construct a single-family home on the property. Apparent neighbors Maura A. Laureau and Gregory T. Laureau oppose construction. The parties apparently agree that the property is not buildable under Norwell's current zoning bylaws. However, Williams contends that the property is protected as buildable pursuant to G. L. c. 40A, § 6, fourth par., which "is concerned with protecting a once valid lot from being rendered unbuildable for residential

[1] Individually and as trustee of the River Realty Trust.

[2] Maura A. Laureau and Gregory T. Laureau.

purposes, assuming the lot meets modest minimum area . . . and frontage . . . requirements" (citation omitted). Rourke v. Rothman, 448 Mass. 190, 197 (2007). A property must meet three requirements to qualify for protection under § 6: that it "was not held in common ownership with any adjoining land, conformed to then existing requirements and had less than the proposed requirement but at least five thousand square feet of area and fifty feet of frontage." G. L. c. 40A, § 6, fourth par. The Laureaus concede that the locus meets two of those requirements but contend that the locus lacks the fifty feet of frontage necessary to meet the third requirement.

Williams argues that Stony Brook Lane, an existing private lane, provides the necessary frontage. In 2014, a panel of this court considered that contention. See Williams v. Board of Appeals of Norwell, 86 Mass. App. Ct. 1111 (2014). The panel concluded: (1) that the deed creating the locus described a right of way that crosses the locus for more than one hundred feet; and (2) that "[t]here was no evidence that 'the existing right of way' referred to in 1948 was anywhere other than [Stony Brook Lane,] the traveled way that exists today." Id. The panel remanded the case so that the board of appeals (board) could decide, in the first instance, whether the locus met the frontage requirements of Norwell's 1942 zoning bylaws, which

bylaws the parties had stipulated were in effect when the locus was created in 1948. Id.

On remand, the board determined that the locus met the requirements for protection as a preexisting nonconforming lot, and affirmed the issuance of a building permit to construct a home on the property. The Laureaus sought review of the board's decision in the Land Court by filing a "complaint after remand." The Laureaus abandoned the position that they had previously taken in both the Land Court and the Appeals Court that the locus was not buildable when it was created in 1948 because it did not comply with the frontage requirements in the 1942 bylaws. They instead argued that the locus became unbuildable sometime after 1948, because Stony Brook Lane does not qualify as "frontage" under the frontage definitions in Norwell's 1955 and 1959 zoning bylaws.

Acting on cross-motions for summary judgment, a Land Court judge annulled the board's decision. The judge found that there were no zoning bylaws in effect in Norwell at the time the locus was created because a 1947 Land Court decision had invalidated the 1942 zoning bylaws. Thus, rather than following the Appeals Court panel's instructions to determine whether the locus met the frontage requirements of the 1942 bylaws, the judge instead determined whether the locus had at least fifty feet of "frontage" as that term is defined in Norwell's 1955, 1959, and

2009 zoning bylaws. The judge concluded that Stony Brook Lane did not meet the definition of "frontage" in those bylaws because there are no documents showing planning board "approval of Stony Brook Lane as it abuts [the locus]." We reverse.

On remand, a trial court judge must follow the terms of an appellate court's decision as to matters addressed in that decision. See City Coal Co. of Springfield, Inc. v. Noonan, 434 Mass. 709, 710–711 (2001). The appellate court's instructions become "the governing 'law of the case' and should not [be] reconsidered by the remand judge." Id. at 712 (vacating portion of judgment that exceeded trial judge's authority by reconsidering issue that appellate court already decided). See also Sprague v. Ticonic Nat'l Bank, 307 U.S. 161, 168 (1939) ("The general proposition which moved [the trial court] -- that it was bound to carry the mandate of the upper court into execution and could not consider the questions which the mandate laid at rest -- is indisputable"). That is true even if the trial court judge disagrees with the appellate court's decision or believes that the appellate court reached an incorrect result. See MacDonald v. MacDonald, 407 Mass. 196, 202–203 (1990) (where Supreme Judicial Court had already decided that opposing party did not have right to raise attorney's misrepresentation, trial judge had no discretion to consider issue).

Here, the Appeals Court panel's instructions on remand were to determine whether the locus met the frontage requirements of the 1942 zoning bylaws. Based upon those instructions, the judge should not have reevaluated the question whether the 1942 zoning bylaws provided the appropriate reference for determining the lot's "frontage." The Appeals Court panel had already ruled that the 1942 bylaws provided the relevant standard (and indeed, the parties had stipulated that those bylaws were in effect in 1948). Thus, the judge's analysis of that issue, while well-intended, was improper. It follows that it was improper for the judge to annul the board's decision based upon the judge's interpretation of the requirements of the 1955, 1959, and 2009 zoning bylaws.[3]

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[3] The judge's opinion assumes that, because the Land Court ruled the 1942 bylaws invalid in a 1947 decision, the 1942 bylaws should simply be ignored as a possible source for defining "frontage" when the lot was created in 1948. That result is far from self-evident. The 1947 Land Court decision ruled that the town had not followed the proper statutory procedure in adopting the bylaws; it did not find fault with the bylaws' definition of frontage. The 1942 bylaws are, at the least, evidence as to what the town of Norwell considered "frontage" as of 1948. Cf. Bellalta v. Zoning Bd. of Appeals of Brookline, 481 Mass. 372, 378 (2019), quoting S. Singer, 3C Statutes and Statutory Construction § 77:7, at 692-694 (8th ed. 2018) ("Specific provisions of a statute are to be 'understood in the context of the statutory framework as a whole, which includes . . . earlier versions of the same act'").

Nor is it self-evident that the Norwell bylaws were conclusively rendered "invalid" as a result of the 1947 Land Court decision. That decision was a trial court decision. There is nothing in the record regarding subsequent events --

Given our conclusion that the judge should have determined the adequacy of the locus's frontage using the 1942 bylaws, we need not reach the question how to define the term "frontage" in c. 40A if there were no zoning bylaws to consult as of the time the locus was created.[4] We think it unlikely, however, that frontage should be defined as the judge did here -- by reference to bylaws passed many years after the creation[5] of a lot. The purpose of c. 40A, § 6 is to "protect landowners' expectations of being able to build on once-valid lots." Rourke, 448 Mass. at 197. See Bellalta v. Zoning Bd. of Appeals of Brookline, 481 Mass. 372, 378 (2019) (specific statutory provisions "are to be understood in the context of the statutory framework as a whole," and "[a] reviewing court's interpretation must be reasonable and supported . . . by the history of the statute"

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for example, whether the decision was appealed -- and accordingly the status of the bylaws as of the time the lot was created in 1948 is not clear.

[4] We also do not decide whether the judge correctly concluded that it was the 1959 zoning bylaws that rendered the locus unbuildable.

[5] We do not agree that Marinelli v. Board of Appeals of Stoughton, 440 Mass. 255 (2003), requires us to define frontage pursuant to the definitions in the 1955, 1959, or 2009 zoning bylaws. In Marinelli, the Supreme Judicial Court looked to define the term "frontage" in c. 40A by reference to the "applicable" bylaws of the town in which the lot was situated. Id. at 262. Marinelli did not address how to determine which version of a town's zoning bylaws should be deemed "applicable" to a particular lot, or what should be done if the lot in question predates the adoption of any zoning bylaws in a municipality.

[quotations and citations omitted]). Accordingly, the question of what constitutes frontage under § 6 generally should be decided with reference to the time a lot was created. Applying zoning definitions from bylaws adopted years later can lead to the result that a property that was buildable when created could be rendered unbuildable based upon subsequent frontage definitions. See Priore v. Sawyer, 30 Mass. App. Ct. 943, 943 (1991) (confirming that section 6's protections apply to lots that predate adoption of zoning bylaws in municipality). Indeed, that is what happened in this case, where the judge concluded that the 1955, 1959, and 2009 zoning bylaws imposed a requirement that Williams produce plans showing that the right of way crossing the locus had been approved by the planning board, an entity that did not come into existence until several years after the recording of the plans creating the locus.

Based upon the foregoing, we conclude that the Land Court

judge's decision annulling the board's October 20, 2016 decision exceeded the scope of the judge's authority on remand.

Judgment reversed.

By the Court (Meade, Englander & Grant, JJ.[6]),

Joseph F. Stanton

Clerk

Entered: July 19, 2021.

[6] The panelists are listed in order of seniority.