Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

ENTRY ORDER

SUPREME COURT DOCKET NO. 2001-163

DECEMBER TERM, 2001

In re Appeal of Larry and June Stevens	}	
	}	
	}	APPEALED FROM:
	}	
	}	Environmental Court
	}	
	}	DOCKET NO. 153-8-99 Vtec
	}	
	}	Trial Judge: Merideth Wright
	}	
	}	

In the above-entitled cause, the Clerk will enter:

The Town of Bolton appeals from a summary judgment of the environmental court in favor of Larry and June Stevens. The Town contends the court erred in concluding that the Stevens' proposed subdivision was a minor subdivision under the Town's subdivision regulations. We affirm.

The land at issue was originally held by Patricia Porter and several others as a 175-acre parcel in the Rural II zoning district of the Town. In 1995, Robert Fischer leased a 6.21-acre portion of the parcel and obtained a zoning permit from the Town for a hunting camp. Under the Town's subdivision regulations, the lease constituted a minor subdivision - defined as any land divided into three or fewer lots or interests for the purpose of sale, lease or development. In December 1998, Porter engaged a firm to prepare a survey plan of the property which showed both the Fischer lot and a three-lot subdivision of the remaining land, consisting of parcels of 148.31, 10.11, and 10.33 acres, denominated as "proposed to be conveyed to Larry and June Stevens." No application for subdivision approval of the plan as shown on this survey was ever submitted.

In January 1999, Porter conveyed the 6.21-acre leased lot to Fischer. That conveyance was approved as a minor subdivision. In February, Porter conveyed the remaining undivided 168 acres to the Stevens. In June, the Stevens applied for minor subdivision approval of a proposed three-lot subdivision, consisting of parcels of 30.21, 30.19, and 90.07 acres. The zoning administrator denied the application on the ground that it required review as a major subdivision. The development review board (DRB) upheld the administrator's decision, and the Stevens appealed to the environmental court.

The parties filed cross-motions for summary judgment. In a written decision and order, the court ruled in favor of the Stevens. The court noted that under the Town's subdivision regulations, a "subdivision" requiring DRB approval is defined as "[a]ny land, vacant or improved, which is divided or proposed to be divided into four (4) or more lots, parcels, sites, units, plots or interests for the purpose of offer, transfer, sale, lease or development." A minor subdivision, which does not require DRB approval, is defined as either land proposed to be divided into three or fewer lots, or as "the division of large parcels where all lots created are greater than thirty (30) acres."

The court found that the lease to Fischer in 1995 constituted a minor subdivision, that the 1999 sale to the Stevens did not constitute a subdivision because it involved only the sale of an undivided parcel of 168 acres, and that the Stevens' subsequent subdivision application should be treated as a minor subdivision under both prongs of the Town's regulation

because it involved only three lots, and because all of the lots were greater than thirty acres. The court further observed that, in defining a major subdivision, if the Town "wishe[d] to count subsequent subdivisions in time or in geographic area, it may wish to amend its regulations to do so." Accordingly, the court entered judgment in favor of the Stevens. This appeal followed.

In construing the Town's subdivision regulation, we apply the ordinary rules of statutory construction, enforcing its plain meaning according to its terms. See Houston v. Town of Waitsfield, 162 Vt. 476, 479 (1994). We review the trial court's construction to determine whether it is "clearly erroneous, arbitrary, or capricious." Id. Analyzed in this light, the trial court's ruling was sound. There were plainly two proposed subdivisions, one in 1995 involving a division of the subject property into two parcels, the Fischer lot and the remaining 168-acre lot, and a second in 1999, involving the Stevens' proposal to subdivide the remaining parcel into three lots.

In reaching this conclusion we reject the Town's argument, made at oral argument, that the 1988 plat became a four lot subdivision when filed. Although the Town ordinance defines a subdivision as land "which is divided or proposed to be divided into four (4) or more lots," the court could find that the filing of the plat in the land records did not divide the land or propose to divide the land. The deed into the Stevens described the land as one "parcel," the affidavit of sellers' lawyer stated that the plat was filed as part of sellers' unsuccessful attempt to subdivide the property, and no application was ever made based on the 1998 filing. The Stevens' 1999 application did not propose to divide the land in the way that is shown on the 1998 plat. Nothing in our statute or in the Town's regulations provides that the filing of the plat in the land records, without more, automatically creates a subdivision or even a proposal for a subdivision.

The Town urges, nevertheless, that we construe its regulation to require major subdivision approval whenever a property is successively subdivided resulting in four or more lots. There is merit to the proposition that developers should not be able to evade subdivision regulations through successive or piece-meal subdivisions. To prevent this, other states and municipalities have enacted regulations defining subdivisions according to the number of parcels divided within a set period of time. See, e.g., Me. Rev. Stat. Ann., tit. 30, 4956(1) (defining subdivision as "the division of a tract or parcel of land into 3 or more lots within any 5-year period"); Or. Rev. Stat. 92.010(15) (1999) (subdivision of land "means to divide land into four or more lots within a calendar year"); Wis. Stat. Ann. 236.02(12)(b) (subdivision includes division of land where "[f]ive or more parcels or building sites of 11/2 acres each or less in area are created by successive divisions within a period of 5 years"). As the trial court observed, the Town may seek to amend its regulation to address this contingency. This Court cannot do so. See MBL Assoc's v. City of S. Burlington, 776 A.2d 432, 436 (Vt. 2001) (where City could have, but failed to, incorporate provision in ordinance, "it is not the Court's place to insert it").

Affirmed.

BY THE COURT:

_____
Jeffrey L. Amestoy, Chief Justice

_____
John A. Dooley, Associate Justice

_____
Marilyn S. Skoglund, Associate Justice