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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2001-509

APRIL TERM, 2002

In re Appeal of Edward and Amy Larson	}	APPEALED FROM:
	}	Environmental Court
	}	DOCKET NO. 70-5-01 Vtec
	}	Trial Judge: Merideth Wright

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

The City of Rutland granted Easter Seals of Vermont/New Hampshire a permit to operate an independent school on Burnham Avenue in Rutland. Neighbors of the school appeal the Environmental Court's grant of summary judgment to Easter Seals affirming the Rutland Board of Zoning Authority's decision upholding the permit. We affirm.

On appeal, we employ the same summary judgment standard as the trial court when reviewing summary judgment orders. O'Donnell v. Bank of Vt., 166 Vt. 221, 224 (1997). If no genuine issue of material fact exists and any party is entitled to judgment as a matter of law, summary judgment is appropriate. V.R.C.P. 56(c)(3); O'Donnell, 166 Vt. at 224. We resolve all doubts regarding the facts in favor of the party opposing summary judgment when determining whether a genuine issue of material fact exists for trial. O'Donnell, 166 Vt. at 224.

The undisputed facts in this case establish that Easter Seals operates a group home for adolescent girls with emotional and behavioral disabilities at 195 Stratton Road in Rutland. In addition to the home, Easter Seals is certified by the Vermont Department of Education to operate an independent school for the 2000-2001 and 2001-2002 school years. Easter Seals contracted to purchase a building owned by State Farm Insurance at 11 Burnham Avenue in Rutland in which Easter Seals plans to operate a day school for the residents of the Stratton Road group home. No residential use of the Burnham Avenue building is proposed.

The Burnham Avenue building is located in Rutland's Residential B zoning district. According to the parties, schools are a permitted use in the Residential B district, but correctional institutions, places of detention, and places where individuals are "lodged" by order of a court or governmental agency are not permitted.[(1)]

Prior to closing on the sale with State Farm, Easter Seals applied for a permit to operate the school at the Burnham Avenue premises. The permit application was signed by an agent of Easter Seals; no State Farm representative signed the application. The zoning administrator granted the permit, which neighbors appealed to the City's Board of Zoning Authority. The Board of Zoning Authority affirmed the permit, concluding that the school was a permitted use in the Residential B district.

Neighbors then appealed to the Environmental Court claiming that the facility Easter Seals proposed was more like a place of detention than a school, and therefore the permit was erroneously granted. Neighbors based their argument on

the fact that the students of the proposed school would come from the Stratton Road group home only and would require significant security measures similar to those employed at the group home. In addition, the Stratton Road residents were primarily girls in state custody and would therefore be, according to neighbors, "lodged" at the school by order of a court or governmental agency. Neighbors also challenged the permit on the grounds that the property's record owner did not sign the permit application, and further discovery was necessary before summary judgment was appropriate.

The Environmental Court rejected neighbors' claims. The court determined that neighbors failed to raise any genuine issue of material fact that the school was not a permitted use in the Residential B district. It noted that neighbors' theory relied on facts surrounding the placement of girls at the Stratton Road group home, and the security measures required at that residential facility, rather than the proposed operation of the school which was at issue in Easter Seals' permit application. Addressing neighbors' argument that the students would be "lodged' at the Burnham Avenue school, the court examined the word's use in Vermont statutes and case law, and concluded that the students would not be "lodged" there because the school is not a correctional facility, jail, prison or similar type of "lock-up" facility. In a separate order, the court disposed of neighbors' claim regarding the defective permit application by concluding that an equitable interest in the real property, which Easter Seals possessed by virtue of its purchase agreement with State Farm, was a sufficient ownership interest for purposes of signing the application. Neighbors timely appealed the matter to this Court.

Neighbors argue that a genuine issue of material fact existed regarding whether the students at the Burnham Avenue school would be "lodged" there by order of a government agency. Summary judgment was therefore improper, they claim. Neighbors' theory is that because the educational program at the Burnham Avenue school is an integral part of the Stratton Road group home program where the students are "lodged," the students are "lodged" at the school as well. Neighbors' argument thus focuses on the meaning of the term "lodged" as it is used in the Rutland zoning ordinance, which is a matter of law, not fact. Because zoning ordinances are interpreted according to principles of statutory construction, we are bound by the ordinance's plain language so that we may give effect to the legislative intent. In re Weeks, 167 Vt. 551, 554 (1998). We will affirm the Environmental Court's interpretation of a zoning ordinance if it is not clearly erroneous, arbitrary or capricious. Id.

We agree with the Environmental Court that the term "lodged" as used in the zoning ordinance means being placed at a facility similar to a jail, correctional facility or other type of detention facility. According to Webster's New International Dictionary, to "lodge" means "to provide quarters for; to give a sleeping place or a place of abode to." Webster's New International Dictionary 1451 (2d ed. unabr. 1959). Thus,"lodge" connotes providing one with a residence, even a temporary one; and when used in the same sentence as correctional facilities, jails, or other places of detention, the term can mean only placing an individual in a secure facility used for dwelling purposes. See Wolfe v. Yudichak, 153 Vt. 235, 240 (1989) (Court reads operative sections in context when construing statute). Unless the students of the proposed school reside at the facility, they are not "lodged" there. It is undisputed that Easter Seals will not use the Burnham Avenue property for any residential purpose. The Environmental Court's construction of the ordinance at issue is therefore not clearly erroneous, arbitrary or capricious, and summary judgment for Easter Seals was appropriate.

Neighbors also claim that the court entered summary judgment prematurely because Easter Seals filed its motion before formal discovery had been propounded or completed. We note that although Easter Seals filed its summary judgment motion two months after neighbors filed their appeal with the Environmental Court, some discovery indeed took place before the court issued its decision. The discovery neighbors sought were documents evidencing security problems and security measures at the Stratton Road group home which they claim would better illuminate the "nature of the residents' detention at this facility." We fail to see how that discovery would help neighbors prove that the Burnham Avenue school was not a permitted use in the Residential B district. We agree with the Environmental Court that neighbors' reliance on the circumstances surrounding the placement of girls at the Stratton Road group home and the security measures utilized there is misplaced. The permit at issue does not concern the Stratton Road home, only the proposed school at Burnham Avenue. Neighbors do not raise any genuine issue that the operations at the Burnham Avenue premises will be anything but a school. Moreover, neighbors fail to cite any authority that supports their additional theory that heightened security measures at the school transforms the school from a permitted use to an impermissible use under Rutland's zoning ordinance. Further discovery of matters related to Stratton Road or the proposed security measures would not, therefore, clear up any factual issue bearing on the matter before the Environmental Court. See State v. Heritage Realty of Vt., 137 Vt. 425, 429 (1979) (litigant's right to discovery before summary judgment lives

only so long as discovery may clear up matters bearing on whether summary judgment should be entered). Therefore, the court did not err by granting summary judgment before neighbors completed their desired, but irrelevant, discovery.

Neighbors' final argument concerns an alleged defect in the permit application. They assert that the application requires the subject property's record owner, or its lessee or agent, to sign the permit application. Because State Farm did not sign the application, the permit is invalid they claim. Neighbors cite no controlling authority for their argument, which we find to be totally without merit. Easter Seals filed an affidavit of the City's zoning administrator in which the administrator explained that prospective purchasers commonly file zoning permit applications. He testified that it would be unreasonable for the City to require purchasers to buy a property first before applying for a permit. In light of that unopposed affidavit, and in the absence of any controlling legal authority requiring the signature of the record owner on zoning permit applications in the City of Rutland, we find no reason to disturb the Environmental Court's ruling on this issue.

Affirmed.

BY THE COURT:

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John A. Dooley, Associate Justice

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James L. Morse, Associate Justice

_____
Denise R. Johnson, Associate Justice

1. The parties did not provide us with a copy of the relevant sections of Rutland's zoning ordinances. Because there is no dispute about what the relevant sections provide, we accept the parties' representations about the ordinance for purposes of this appeal.