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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2002-432

JULY TERM, 2003

In re Appeal of James Blanchette	}	APPEALED FROM:
	}	Environmental Court
	}	DOCKET NO. 108-7-01 Vtec
	}	Trial Judge: Matthew I. Katz

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

Appellant James Blanchette seeks reversal of the environmental court' s summary judgment in favor of the Town of Ripton on Blanchette' s application for a permit to construct a single-family residence. We affirm the environmental court' s ruling that Blanchette was not entitled to the permit because his property does not meet the minimum lot size under the Town' s zoning regulations.

Because the environmental court disposed of Blanchette' s claims on summary judgment, we review his appeal using the same standard: if there is no genuine dispute over the material facts, and any party is entitled to judgment as a matter of law, summary judgment is proper. V.R.C.P. 56(c); Wentworth v. Fletcher Allen Health Care, 171 Vt. 614, 616 (2000) (mem.). We summarize the undisputed material facts below.

In 1967, Blanchette purchased a two-and-one-half-acre parcel of property in Ripton. In 1972, he hired a surveyor to divide the parcel into two parts. The western portion of the parcel had an existing home and related improvements. The eastern portion of Blanchette' s property was vacant. He recorded the survey map in the Town of Ripton' s land records. In the late 1980s, Blanchette obtained a State subdivision permit, in addition to other permits, because he intended to build a three-unit condominium on the eastern portion of the 2.5-acre parcel. He later drilled a well for the eastern portion of his lot and did other site preparation work.

In March 1989, the Town of Ripton adopted local zoning. Under the new zoning ordinance, Blanchette' s property was in a low-density residential area with a minimum lot size of ten acres. In June 1990, Blanchette attended a town zoning board meeting at which the board discussed Blanchette' s plans for the eastern portion of his property. The board noted that he had made substantial progress on his condominium project, which Blanchette started before the Town adopted local zoning regulations, and concluded that his project was grandfathered under § 514 of the zoning regulations.

Ten years later, Blanchette still had not constructed a septic system or the condominium building on the eastern portion of his property. In November 2000, he applied for a zoning permit for a single-family home and septic system on the parcel. The zoning administrator denied the permit. The administrator informed Blanchette that his lot was too small under the zoning regulations, and explained that the property did not qualify for an exception because the eastern and western portions of his property were contiguous and were in common ownership in 1989 when the town implemented zoning. Blanchette appealed to the board of adjustment, which affirmed the administrator' s decision. Blanchette thereafter appealed to the environmental court, and again to this Court after the environmental court ruled in favor of the Town.

Blanchette raises several claims of error on appeal. He contends that (1) the eastern and western portions of his property

did not merge under 24 V.S.A. § 4406(1)(A) as the trial court concluded; (2) his right to develop his property as two separate lots had vested prior to the adoption of zoning in the Town of Ripton; (3) the Town is estopped from denying him a permit to develop the eastern lot; and (4) the court overlooked material facts in dispute and thus summary judgment was improper. We address each argument in turn.

Blanchette first argues that the environmental court erred by holding that the two portions of his property merged into a single nonconforming small lot upon the enactment of zoning. When zoning ordinances become effective, existing small lots are protected by state statutes and local zoning regulations. See 24 V.S.A. § 4406(1) (individual and separate lots in nonaffiliated ownership from surrounding properties that exist on effective date of zoning regulations may be developed for purposes permitted in district in which lot is located, even if lot is nonconforming to minimum lot size requirements); see also Town of Ripton Zoning Regulations § 501 (same). Merger of two contiguous small lots occurs when they are owned by the same person at the time zoning goes into effect, see In re Richards, __ Vt. __, __, 819 A.2d 676, 680 (2002), or they come into common ownership after the adoption of zoning and the criteria under § 4406(1)(A) are satisfied. 24 V.S.A. § 4406(1)(A)(i)-(iv) (no merger occurs and separate conveyance permitted if lots are conveyed in their preexisting and nonconforming configuration, each lot had been developed with water supply and disposal system for wastewater when zoning went into effect, water supply and wastewater disposal systems are working properly, and easements are included in deeds for wastewater system replacement in case of future failure). Thus, to receive small lot protection and avoid merger, Blanchette had to demonstrate that his property was held in individual, separate, and nonaffiliated ownership when Ripton adopted zoning, or that the properties came into common ownership after the Town adopted zoning and the lots satisfy the § 4406(1)(A) criteria. The undisputed material facts establish that Blanchette cannot make either showing. Blanchette has owned his property since 1967, long before the Town adopted zoning. Consequently, he was not entitled to a permit to develop the eastern portion of his property because it did not meet the required minimum lot size or satisfy the criteria under § 4406(1) or § 501 of the zoning regulations.

Blanchette argues that he can separately develop the eastern portion of his property because he has a design for a wastewater system and he obtained a state wastewater permit. Thus, Blanchette contends, he has satisfied the anti-merger criterion in § 4406(1)(A)(ii). See id. § 4406(1)(A)(ii) (setting forth requirement for water supply and wastewater disposal system as one of several criteria for exemption from merger). The argument has no merit. Under the statute' s plain language, § 4406(1)(A) applies only when a lot " comes under common ownership with one or more contiguous lots" after the effective date of zoning. There is no dispute in this case that Blanchette owned both the eastern and western portions of his property years before the Town of Ripton adopted zoning regulations. Section 4406(1)(A) is, therefore, inapplicable to Blanchette' s claim.

Blanchette' s claim that he had a vested right to develop his property is similarly without merit. Citing Smith v. Winhall Planning Comm' n, 140 Vt. 178 (1981), Blanchette argues that his receipt of a state subdivision permit prior to the enactment of zoning entitles him to have his project evaluated under state standards in effect prior to the adoption of zoning in the Town of Ripton. In Winhall, we held that once a property owner files a proper application for a zoning permit, the property owner is entitled to review under the zoning regulations existing at the time of filing even if the regulations are revised while the application is pending. Id. at 181-82. As the Town argues, however, the relevant precedent is In re McCormick Mgmt. Co., 149 Vt. 585 (1988), and not Winhall. In McCormick,we held that " a land owner acquires no vested rights prior to the enactment of a zoning ordinance other than those expressly granted by" relevant state statutes. Id. at 590; see also In re Taft Corners Assocs., 171 Vt. 135, 140-41 (2000) (holders of subdivision permits have no vested rights to zoning permits under zoning ordinance applicable when subdivision permits were sought or obtained). With respect to small lots, the relevant state statute is § 4406(1). We have already determined that § 4406(1) does not grant Blanchette any vested rights to develop his property, and he cites no controlling authority requiring a different result. Moreover, the aforementioned holding in Tafts Corners Assocs., which denied a claim virtually identical to Blanchette' s here, precludes the result Blanchette seeks.

Blanchette next argues that the Town of Ripton is estopped from denying him a building permit for the eastern portion of his lot. His estoppel claim is premised on the following facts: (1) the Town has taxed his property as two lots capable of development; (2) the Town did not lower the value of the property for tax purposes after it enacted zoning; (3) the Town considered his project grandfathered under § 514 of the zoning ordinance in 1990; and (4) Blanchette has incurred significant expense in preparing his property for development. To benefit from the doctrine of estoppel, Blanchette must establish four elements:

> (1) the party to be estopped must know the facts; (2) the party to be estopped must intend that its conduct shall be acted upon, or the conduct must be such that the party asserting estoppel has a right to believe it is intended to be acted upon; (3) the party asserting estoppel must be ignorant of the true facts; and (4) the party asserting estoppel must detrimentally rely on the conduct of the party to be estopped.

Agency of Natural Resources v. Godnick, 162 Vt. 588, 592 (1994). Estoppel against the government is rarely applied, and is appropriate " only when the injustice that would ensue from a failure to find an estoppel sufficiently outweighs any effect upon public interest or policy that would result from estopping the government in a particular case." Id. at 593. Other than the balancing test used to evaluate claims of estoppel against the government, Blanchette' s brief fails to address the elements of the estoppel doctrine. We therefore reject the claim as inadequately briefed. See In re Charlotte Farm & Mills, 172 Vt. 607, 609 (2001) (mem.) (rejecting appellant' s estoppel claim as inadequately briefed where appellant did not discuss the elements of estoppel in its brief and failed to explain how trial court erred in concluding that two elements of estoppel were not met). We note, however, that a town' s decision to treat a single lot as multiple lots for tax purposes does not defeat merger, Drumheller v. Shelburne Zoning Bd. of Adjustment, 155 Vt. 524, 530 (1990), and thus the town' s taxing decisions have no bearing on this zoning matter.*

Blanchette' s last claim asserts that the trial court erred by entering summary judgment because the parties are in " stark disagreement" over certain facts. We have reviewed the facts Blanchette alleges are disputed. We fail to see how they are material to the central question in this case, namely whether Blanchette is entitled to small lot protection under § 4406(1) and § 501 of the Town' s zoning ordinance. None of the facts he cites has any bearing on that issue. Accordingly, summary judgment was proper.

Affirmed.

BY THE COURT:

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Jeffrey L. Amestoy, Chief Justice

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Marilyn S. Skoglund, Associate Justice

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Ernest W. Gibson III, Associate Justice (Ret.)

Specially Assigned

Footnotes

* Blanchette's claim that the Town grandfathered his project under § 514 of the Town's zoning ordinance is also unavailing. The ordinance required him to finish his project within two years of the date the Town adopted zoning. See Town of Ripton Zoning Regulations § 514. It is undisputed that Blanchette never built the condominium project he had originally planned, and did not apply for a permit to build the single residence at issue here until almost ten years after the two-year grace period under § 514 had expired. Whatever grandfathered status his project may have enjoyed in 1990, it has long since lapsed under the terms of § 514.