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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2015-341

FEBRUARY TERM, 2016

In re Moody Subdivision Appeal (Morris L. Silver and Torrin D. Silver, Appellants)	}	APPEALED FROM:
	}	Superior Court, Environmental Division
	}	DOCKET NO. 72-5-14 Vtec
	}	Trial Judge: Thomas G. Walsh

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

Morris and Torrin Silver, adjoining landowners, appeal decisions of the Environmental Division granting summary judgment with respect to Alicia Moody's application to subdivide her property. We affirm.

Applicant owns a 6.1-acre[*] parcel of land with a house and garage on it in the town of Benson's Agricultural and Rural Residential Zoning District (ARR district). Appellants own a 56.3-acre parcel that borders applicant's property to the north. In the winter of 2013, the town's Development Review Board (DRB) approved applicant's request for a three-lot subdivision of her property. Appellants appealed, and the Environmental Division vacated the subdivision approval, concluding that it violated the town's zoning bylaws.

In the fall of 2013, after the town amended its zoning bylaws, applicant once again sought permission to subdivide her property, this time into two lots, one lot of approximately 2 acres containing the existing structures, and another lot of approximately 4.1 acres. Following a public hearing, in which appellants participated as interested persons, the DRB approved the application. Appellants sought de novo review with the Environmental Division, which, in three decisions between February and August 2015, rejected each of the twelve issues raised by appellants, and granted applicant summary judgment. See 24 V.S.A. § 4471(a) ("An interested person who has participated in a municipal regulatory proceeding authorized under this title may appeal a decision rendered in that proceeding by an appropriate municipal panel to the Environmental Division.").

On appeal to this Court, appellants argue that the Environmental Division erred in approving the application because the town amended its zoning bylaws in a manner inconsistent with the goals of the town plan, which amounted to an invalid exercise of its authority to promulgate land-use regulations under 24 V.S.A. §§ 4410 and 4411. According to appellants, the 2013 zoning bylaws eliminated requirements in the 2011 zoning bylaws with respect to minimum lot width, depth, and requirements for development, so as to make the new regulations

[*] This acreage does not include .42 acres that was the subject of a lot line adjustment with another neighboring property.

inconsistent with the goals of the town plan aimed at limiting the number of nonconforming lots and preserving the rural nature of the ARR district.

For the same reasons expressed by the Environmental Division, we find appellants' arguments unavailing. "A municipality that has adopted a plan through its bylaws may define and regulate land development in any manner that the municipality establishes in its bylaws, provided those bylaws are in conformance with the plan and adopted for the purposes set forth in section 4302 of this title." 24 V.S.A. § 4410; see 24 V.S.A. § 4401 (stating that municipalities with town plans and planning commissions in place may adopt, amend, and enforce regulations "in conformance with the plan"); 24 V.S.A. § 4411(a) ("A municipality may regulate land development in conformance with its municipal plan . . . to govern the use of land and the placement, spacing, and size of structures.").

As we stated in In re Molgano, 163 Vt. 25, 30 (1994), this Court has "previously defined the relationship between plans and zoning bylaws that conflict with or only partially implement a plan." For example, in Smith v. Winhall Planning Comm'n, 140 Vt. 178 (1981), the town plan provided for development at a density no greater than one unit per five acres for a particular area, but the zoning bylaws, while generally implementing the policy, allowed one unit per acre in a specific part of the area involved. In response to the argument that the zoning bylaws were invalid because they did not conform with the plan, this Court stated:

> The regulations as adopted may indeed be inconsistent with the Town Plan, but the total consistency upon which this argument is predicated is not a legal requirement. The plan is a general guideline to the legislative body, an overall guide to community development. Partial implementation is not unusual; the specific implementation is the part adopted in the zoning regulations. The regulations control the plan.

Id. at 183 (citation omitted). We have noted that town plans are "stated in broad, general terms" and are "abstract and advisory," as opposed to zoning bylaws, which "are specific and regulatory." Kalakowski v. John A. Russell Corp., 137 Vt. 219, 225 (1979) (citation omitted). Thus, although the zoning bylaws "must reflect the plan," they "need not be controlled by it." Id. "Although the plan may recommend many desirable approaches to municipal development, only those provisions incorporated in the bylaws are legally enforceable." Id. at 225-26; accord In re Molgano, 163 Vt. at 31.

Appellants fail to discuss, let alone distinguish, these precedents, even though the Environmental Division relied upon them in rejecting appellants' argument that the 2013 bylaws are inconsistent with the town plan and thus constitute an invalid exercise of the town's regulatory authority. None of the statements in the town plan that appellants cite rise to the level of specific, enforceable restraints on the town's zoning authority. Rather, they are, for the most part, broad pronouncements regarding the goals of the town with respect to development. Moreover, nothing in the 2013 bylaws plainly undermines those goals, certainly not to the extent that a court may declare the bylaws void ab initio, as appellants request.

Finally, we find no merit to appellants' argument that the Environmental Division was barred from reviewing the application because it was incomplete. Appellants contend that the application was incomplete because applicant never filed an application fee, as required by the town bylaws. Appellants acknowledge that the town waived the application fee in this case, but they contend that the application was still incomplete because the bylaws do not include a waiver

provision. Regardless of whether the town bylaws contain a waiver provision, the town waived the application fee, accepted the application as complete, and approved it. Nothing prevented the Environmental Division from reviewing the application de novo.

Affirmed.

BY THE COURT:

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Paul L. Reiber, Chief Justice

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John A. Dooley, Associate Justice

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Marilyn S. Skoglund, Associate Justice