

STATE OF VERMONT
ENVIRONMENTAL COURT

In re Appeal of
Raymond Lovell

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Docket No. 101-6-99 Vtec

DECISION and ORDER

Appellant Raymond Lovell appealed from a May 10, 1999 decision of the Zoning Board of Adjustment (ZBA) of the Town of Maidstone, denying his March 1999 application for a zoning permit for a campground. Appellant has appeared and represents himself; the Town of Maidstone is represented by Charles D. Hickey, Esq. The Town has moved for summary judgment.

In 1998, Appellant applied for a zoning permit to build and operate a campground on his property, located in the Flood Zone zoning district as shown on the official zoning map of the Town of Maidstone. The Flood Zone district was described in §203.06 of the 1994 Zoning Bylaw, in effect at the time of that application, as “the land along the Connecticut River as indicated on the official zoning map¹.” Under §203.06 of the 1994 Zoning Bylaw, no conditional uses were provided for in the Flood Zone district, and a campground was neither an allowed use (allowed without a permit) nor a permitted use (allowed upon issuance of a permit). Therefore, Appellant’s 1998 application was denied by the Zoning Administrator and the ZBA, but Appellant did not appeal the denial to this Court².

¹ The flood zone is not defined in the regulations by an elevation line or by reference to a federally-prepared map, although either might have been the basis upon which the map was originally prepared.

² Because he did not appeal, he cannot now contest, directly or indirectly, that

the property was located in the Flood Zone district under the 1994 Zoning Bylaw and map. 24 V.S.A. § 4472(d).

At the annual Town Meeting on March 2, 1999, the Town of Maidstone adopted a new Zoning Bylaw. Section 201 of the 1999 Zoning Bylaw states that “[t]he zoning map officially entitled ‘Zoning Map of the Town of Maidstone’ is hereby adopted as part of this bylaw.” The 1999 Zoning Bylaw added one additional district classification: the “Lake Commercial” district, but did not otherwise purport to change the boundaries of any of the other zoning districts, including the Flood Zone. As under the former Zoning Bylaw, §202 stated that “regardless of the existence of other printed copies of the zoning map which from time to time may be made or published, the official zoning map shall be located in the Town Clerk’s Office and shall be the final authority as to the current zoning status of the land areas of the town.” The Flood Zone district remained defined as it had been in the 1994 Zoning Bylaw, no conditional uses were provided for in the Flood Zone district, and a campground was not among the permitted uses of agricultural uses, primary forestry operations, or home occupations.

In preparation for the March 2, 1999 vote on the new Zoning Bylaw, copies of the proposed bylaw had been distributed to the Town’s voters. Attached to the proposed Bylaw was a map prepared by the Northeastern Vermont Development Association entitled “Town of Maidstone Proposed Zoning Map - **DRAFT** - December 3, 1998” (1998 Draft Zoning Map) which showed the proposed new Lake Commercial district.

The 1998 draft zoning map circulated to the public with the proposed zoning bylaw appeared to show that the flood zone did not cover the portion of Appellant’s property where the campground was proposed, but that the proposed site was in the Rural Lands 1 district in which a campground could be submitted to the ZBA for approval as a conditional use. Based on his position that the 1998 Draft Zoning Map was adopted with the 1999 Zoning Bylaw, Appellant resubmitted his application³ for a permit for the campground. The Zoning Administrator and the ZBA again denied the request because according to the official zoning map the proposed site remained in the Flood Zone district in which a campground was not an approvable use.

³ The Town also argues that the 1999 application was an impermissible successive application. However, if the official zoning map were changed, that would be a sufficiently changed circumstance to allow the 1999 application to be considered.

Appellant argues that the 1998 Draft Zoning Map was in fact adopted by the voters of the town when they approved the Bylaw, putting his property in the Rural Lands 1 zone, and that therefore his proposal should have been considered as a conditional use by the ZBA. The Town argues that the 1998 Draft Zoning Map was merely an unofficial draft presented to show the voters the new Lake Commercial zone, that the draft Bylaw approved by the Planning Commission and Selectboard for presentation to the voters did not include any changes to the existing boundaries of any zone in the town, and that in any event unless the official zoning map is changed, the Flood Zone remains as shown on the official zoning map. The state zoning enabling act allows municipalities to adopt and amend five types of bylaws: zoning regulations, subdivision regulations, an official map, shoreland bylaws, and flood hazard bylaws. 24 V.S.A. §4401(b). The proposed new Zoning Bylaw had been prepared and authorized to be presented to the voters by the Planning Commission and the Selectboard, pursuant to 24 V.S.A. §§4403 and 4404. The official zoning map was not approved by those bodies to be the subject of the vote, and the warning for the Town meeting vote did not mention any proposed official zoning map amendment; rather, it referred to “the proposed zoning bylaw[] which includes the subdivision regulations.”

Further, §202 of both the 1994 and the 1999 Zoning Bylaw states that the official zoning map which is located in the town office shall be the final authority with respect to the current zoning regulations. If the zoning bylaw in its text refers to an official copy of the map, then that copy is adopted by reference in the bylaw, and no other copy is in effect, even if it was attached to the proposed zoning bylaw. McLaughry v. Town of Norwich, 140 Vt. 49 (1981). Even if the attachment of the draft unofficial map to the voters’ copies of the proposed zoning bylaw had been effective to amend the boundaries of the flood zone district, under the language of §202 such approval would not have changed the boundaries until the changes had been made on the official zoning map. If the official zoning map is located in the Town Clerk’s Office, then the Town’s Motion for Summary Judgment must be granted.

A material fact, however, remains in dispute as to where and whether the official zoning map is located in the Town Clerk’s Office as referenced in §202. In the materials

submitted with his argument, which included a videotape, Appellant sought to demonstrate that there is no official zoning map posted on the walls of the Town Clerk's Office. However, the Zoning Bylaw does not require the map to be hanging on the wall, but only that it must be located in the Town Clerk's Office. This disputed fact cannot be established by the present motion for summary judgment; accordingly this Court will hold a hearing to resolve this single disputed fact.

On March 13, 2000 at 11:45 a.m., this Court will hold a hearing at the courthouse in Guildhall, Vermont on the question of whether an official Zoning Map is located in the Maidstone Town Clerk's Office. At that hearing, the Court will return to Mr. Lovell any original materials he submitted with his written argument. A site visit to the Town Clerk's Office, if necessary, will be conducted over the noon hour. If that date presents problems for any party, March 20 and April 11 are also available for this hearing. Please advise the Environmental Court as soon as possible if there is a problem with the March 13 date.

Done at Barre, Vermont, this 16th day of February, 2000.

Merideth Wright
Environmental Judge