STATE OF VERMONT

ENVIRONMENTAL COURT

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| In re: Appeal of CUBB Properties | } } } } } | Docket No. 150-8-99 Vtec |

Decision and Order on Motion for Summary Judgment

Appellant appealed from the July 27, 1999 decision of the Zoning Board of Adjustment (ZBA) of the City of St. Albans, upholding the Zoning Administrator's denial of a permit to place a mobile home on Lot 5 in Appellant's mobile home park. Appellant is represented by Stuart M. Bennett, Esq. and Stephen A. Unsworth, Esq.; the City is represented by Robert E. Farrar, Esq.; Intervenor Department of Housing and Community Affairs is represented by Tina Ruth, Esq. and Jacob A. Humbert, Esq. The parties have filed cross-motions for summary judgment.

We must state at the outset that this is not a case about affordable housing in Vermont, despite the important policy arguments on behalf of affordable housing filed in this case. Nor is it primarily a case about the grandfathering or abandonment of non-conforming uses. Rather, it is a case which is decided solely on Appellant's failure to appeal an action of the Zoning Administrator in 1997 in issuing a Certificate of Occupancy for thirty lots in the mobile home park, then excluding the Lot 5 in question in the present appeal.

Appellant owns a mobile home park, commonly referred to as Prior's Mobile Home Park, located on a 5.1-acre parcel of land at 47 Nason Street in the City of St. Albans, in the High Density Residential zoning district. It has not been subdivided and is assessed for tax purposes as a single property. Appellant purchased the property in 1982, but it was a 31-site mobile home park on the date of enactment of the first zoning regulations in the

City of St. Albans in 1964, and hence obtained grandfathered status as of that date. The number of mobile homes in the park has fluctuated over the years. Lot 5 became vacant some time in 1994, and as of August 1997 had been vacant for more than 12 months. As of the July 1999 decision on appeal in the present case, Lot 5 remained vacant.

In 1997 Appellant had obtained a Certificate of Occupancy for the mobile home park, but only for thirty units, that is, exclusive of Lot 5. Amended Zoning Regulations were adopted by the City effective April 14, 1998. On May 3, 1999, Appellant applied to place a mobile home on Lot 5, which application was denied by the Zoning Administrator on the basis of the Certificate of Occupancy and §602 of the 1998 Zoning Regulations governing nonconforming uses, which precludes the reestablishment of a nonconforming use which has been discontinued for a period of one year. Appellant appealed to the ZBA, which also denied the application and the present appeal followed.

The Certificate of Occupancy had been issued on September 3, 1997, under §803 of the Zoning Regulations in effect at that time. As of August of 1997, the mobile home park was nonconforming as to park size[1], mobile home space size, access driveways, setback distances, lot parking spaces, open space, mobile home pad requirements, landscaping requirements and mobile home additions. Under §505.3 of the Zoning Regulations in effect in 1997, it was allowed to "continue although such use does not conform to the provisions of this regulation."

[1] It is unclear whether this reference in the Certificate of Occupancy is to an absolute minimum size requirement, or to a requirement for a maximum number of units per acre.

Section 505.3 also provided that "no non-conforming use that has been discontinued for a period of twelve consecutive months shall be reestablished except in conformity with this regulation." The Certificate of Occupancy noted that Lot 5 had been vacant for more than a year,[2] and that the mobile home park was in compliance with the zoning regulations only as to the thirty remaining mobile home sites, exclusive of Lot 5. The Certificate clearly stated that it was "subject to a 15 day appeal period pursuant to 24 V.S.A. Sec. 4464." No party appealed the Certificate of Occupancy, which was an action of the Zoning Administrator appealable under §4464. Accordingly, it has become final under 24 V.S.A. §4472(a), and cannot now be challenged[3]. As of approximately September 18, 1997, Appellant's mobile home park was authorized for its remaining thirty sites, and not for thirty-one.

Accordingly, based on the foregoing, the City's Motion for Summary Judgment is GRANTED; Appellant's Motion for Summary Judgment and the Department of Housing and Community Affairs' Motion for Summary Judgment are DENIED. Appellant's mobile home park has pre-existing nonconforming ("grandfathered") status only for thirty mobile home sites, exclusive of Lot 5.

Done at Barre, Vermont, this 25th day of January, 2000.

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Merideth Wright

[2] We note that nothing in a municipality's zoning regulations may conflict with the special state provisions for mobile homes, mobile home parks, or affordable housing in the state zoning enabling act or in 10 V.S.A. Chapter 153. If the Legislature wishes to require municipalities to allow lots in nonconforming mobile home parks to remain vacant for more than a year, it may add such a provision to that chapter or may amend 24 V.S.A. §§4406(4) or 4408 to that effect.

[3] It cannot be challenged whether it was a correct or an erroneous decision, and therefore we need not reach Appellant's argument that this decision was in error. If it were necessary to reach this argument, material facts would be in dispute to determine whether the vacancy on Lot 5 rendered the park less nonconforming. See Appeal of Gregoire, Docket No. 98-508, 10 Vt. L. Week 335 (October 21, 1999).

Environmental Judge