

Judge delivers ruling on Clinton Township zoning challenge

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By Frank Mustac / Hunterdon County Democrat

CLINTON TWP. — A Superior Court judge has ruled on a lawsuit that seems to be just the latest chapter in a 14-year-old dispute over the zoning of properties that straddle Echo Lane.

The plaintiffs, Joyce Dee Bradley Family LP and Lemad Corp., sued the Township of Clinton in 2006 claiming their properties should be designated as an office building zone.

Bradley owns a 5-acre parcel off Route 31 on one side of Echo Lane and Lemad owns a 10-acre parcel on Route 31 on the other side of Echo Lane.

Back in the mid-1990s, permission was sought to build a three-story, 10,000-square-foot office building on the Bradley site. Owners of the Bradley property first filed suit in 1997 after the area's zoning was changed from commercial/residential to residential only. The owners did not wish the zoning to revert back to commercial/residential but instead wanted the land to be designated as an office building zone.

In 1999, as part of a settlement agreement for the 1997 lawsuit, officially called a "consent order," the township agreed to grant the office building zoning and changed its master plan. William J. Caldwell, the former attorney for Clinton Township, signed that consent order.

Six years later, the Highlands Act placed the properties in the preservation area and the Planning Board sought to restrict the land to residential, agricultural and municipal uses, according to Township Attorney Trishka Waterbury. That change renewed the dispute and, this time, both Bradley and Lemad sued in 2006. Lemad joined in as a plaintiff claiming essentially that since their 10-acre property was close by the Bradley property, it should be afforded the same zoning.

A proposed settlement of the 2006 lawsuit was rejected by the Township Council about a year ago, sending the parties back into Superior Court.

Superior Court Judge Peter A. Buchsbaum ruled on June 28 essentially that because of the 1999 consent order, the 5-acre Bradley property will be zoned for an office building, but that the 10 acres owned by Lemad will not.

The judge, however, set a time limit on the zoning for the Bradley property, giving the landowner until June 30, 2013 "to file a complete application for development." Otherwise, the township can request that the court lift its obligation to keep the office building zoning on the property.

The June 30, 2013 date is six months after the expiration of the Permit Extension Act of 2008. The act was designed to respond to New Jersey's "state of economic emergency" by extending

the duration of certain governmental approvals and permits that otherwise would have expired well beforehand.

“My understanding was that our zoning was upheld,” said Clinton Township Mayor Cimei, commenting on the Judge Buchsbaum’s ruling. “He didn’t find that we were ‘arbitrary’ and ‘capricious.’ I think those were the words that the plaintiffs used.

“So the judge ruled in our favor that the 2006 rezoning was reasonable and justified. ... It’s not clear to me that (the judge) gave them a lot. I was very happy.”

He praised the work of the township’s Planning Board counsel and professionals, adding, “We’re not afraid to defend this good solid work from attack by developers. And our zoning was upheld, so I’m glad that it was. We’ll move forward and see what the future brings.”

Elliott Ruga, a senior policy analyst with the New Jersey Highlands Coalition, which has been keeping an eye on the case, read the judge’s ruling.

“They still have to go through the Highlands exemption process before they can be approved,” said Ruga, explaining that an office building or any other proposed development on the Bradley property would receive scrutiny under rules governing land within a protection zone that is part of the Highlands Preservation Area.

Whether the property is developed with sewers or with septic, “there are a lot of other considerations that are beyond the scope of the municipality to determine for this project to move forward,” Ruga said. “So I think it’s still complex to achieve what they’re looking to achieve on the lot that abuts Route 31” (the Bradley parcel).

He was pleased that the judge held up the RC zone for the other lot that abuts Spruce Run. “In the end, it sounds like it would be a ‘win, win, win’ if both lots are bought for preservation by a combination of local land trust, perhaps the municipality, the (state) Green Acres (program) and maybe even the North Jersey Water Supply Authority, which is in the business of purchasing high-quality land for watershed preservation,” he said. “I don’t know specifics, but I know there is interest out there. There have been some discussions.”

He said the coalition plans “to be watching closely and making sure whatever is proposed is appropriate.”

Robert J. Benbrook, the attorney for Bradley and Lemad, did not return a telephone call requesting comment on the judge’s ruling.

Warren Cooper and Curtis Leeds contributed to this report.