

ZONING AND LAND USE PLANNING

Recreation Districts and the Legacy of ‘Bonnie Briar’

Many, and perhaps even most, court decisions simply resolve a legal dispute between the litigants and are never heard of again. They are not cited in briefs or memoranda of law or by any other court. This is as true in the zoning and land use planning context as it is with other areas of law.

Then there is the decision that not only ends a legal fight but that influences and affects future behavior. The decision that has significant practical implications for people and businesses, and for their communities.

The New York Court of Appeals issued such a decision in late November 1999. Thoughts then primarily were focused on Thanksgiving (two days later), the coming calendar change from 1999 to 2000, and what some in the media and elsewhere characterized as the

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Y2K problem, and many probably missed the court’s opinion when it came down. Yet it has profoundly influenced many New York towns and villages, and their residents.

In the nearly two decades that have passed since the court issued its decision, *Bonnie Briar* has been relied on by local governments across the state as the basis for their ability to create recreation districts limiting permitted uses in those areas to those that preserve open space and other natural resources.

In *Bonnie Briar Syndicate. v. Town of Mamaroneck*, 94 N.Y.2d 96 (1999), the court upheld a change to the zoning of certain real property in the town of Mamaroneck

from residential to solely recreational use. In the nearly two decades that have passed since the court issued its decision, *Bonnie Briar* has been relied on by local governments across the state as the basis for their ability to create recreation districts limiting permitted uses in those areas to those that preserve open space and other natural resources.

The Rezoning Process

The *Bonnie Briar* case involved a 150-acre tract of land in the town of Mamaroneck that was owned by the *Bonnie Briar Syndicate Inc.* (the *Syndicate*) and that, beginning in 1921, was leased to the *Bonnie Briar Country Club* for use as a private golf course.

In 1922, the land for the first time became subject to a zoning ordinance when it was zoned for residential use, permitting single-family detached homes, some on parcels having a minimum lot area of 15,000 square feet. The area surrounding the golf course was similarly zoned, and over the years was developed

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in accordance with those zoning restrictions.

In the 1960s, the town began to focus on its diminishing open spaces. In 1966, it developed a “master plan” that recommended that Bonnie Briar remain a golf course.

A 1976 update to the master plan recommended that another neighboring golf course—Winged Foot Golf Club—also remain a golf course.

Then, in 1985, the two golf course properties were included in a land use study that also recommended their retention as recreational areas and open spaces, concluding that development of these properties would increase the risk of flooding from the Sheldrake River. While undeveloped, the land helped control flooding by acting as a natural detention basin for rising river waters due to storms.

In 1986, the town of Mamaroneck along with the neighboring town of Larchmont together adopted a local waterfront revitalization program (LWRP). The LWRP found that the two golf clubs were “appropriate uses” that, in addition to their ecological, recreational, architectural, and scenic value, provided “open space and natural water retention.” It said that they “should remain in their present use if possible.”

In 1988, Mamaroneck retained a private planning firm to assist in formulating a comprehensive plan to address and best implement the goals stated in the LWRP. The planner examined a number of options and issued a report considering three development schemes. The development schemes contemplated some residential development.

Rezoning the golf course properties required a review pursuant to the State Environmental Quality Review Act (SEQRA) and, on May 30, 1990, the town board of Mamaroneck declared its intention to serve as lead agency for the purpose of conducting the SEQRA review. After preparation of a generic environmental impact statement in 1991, the town board issued a findings statement to complete its SEQRA review in 1994.

Although other avenues of attack are available for property owners, it is clear that local governments that carefully study, plan, and create recreation districts to achieve legitimate environmental and planning goals should be able to withstand court challenges to those decisions.

The findings statement noted that the area was facing “long-term pressure toward continuing urbanization in an already over-developed landscape,” observing that “less than 5 percent of the Westchester County watershed of the Long Island Sound remains open space.”

In addition, the findings statement explained that further residential development would frustrate Mamaroneck’s goal of preserving recreational opportunities for town and area residents, pointing out that 70 percent of Bonnie Briar’s membership resided within a five-mile radius of the property.

Finally, in connection with concerns over flooding, the findings statement said that, without even considering further development beyond Mamaroneck’s control, residential development within the town could increase the flooding already experienced by many area homeowners.

Based on all of these considerations, the findings statement concluded that a recreation zone best achieved the objectives of town, state, regional, and federal policies that guided the town’s comprehensive planning process.

Accordingly, the town board decided to rezone the Bonnie Briar and Winged Foot club properties exclusively for recreational use to achieve the goals of (1) preserving open space, (2) providing recreational opportunities for town and other area residents, and (3) mitigating flooding of both coastal and flood plain areas. Toward that end, it enacted Local Laws, 1994, No. 6.

The Challenge

Just months prior to the passage of Local Law No. 6, the Syndicate retained its own planning firm and submitted a preliminary subdivision plan for the golf club property to the Mamaroneck town board. The Syndicate’s plan provided for the construction of 71 residential lots, leaving approximately 112 acres of standing open space on the existing 18-hole golf course site.

Then, after the town board enacted the zoning change, the Syndicate sued, contending that Local Law No. 6 effected an unconstitutional taking

of its property without just compensation. The town board moved for summary judgment with respect to the Syndicate's taking claims. The Supreme Court denied this motion, but the Appellate Division reversed, granting the town board's motion and remitting to Supreme Court for the entry of judgment declaring the law constitutional as applied.

The case reached the Court of Appeals.

The Court of Appeals Decision

The Court affirmed.

In its decision, the court explained that a zoning law effected a regulatory taking if either the ordinance did not "substantially advance" legitimate state interests or the ordinance denied an owner economically viable use of the owner's land. The Syndicate had abandoned any claim that it had been denied all economically viable uses of its land, so the Syndicate's only remaining claim before the court was that Mamaroneck had not met the "substantially advance" regulatory taking-prong. The Syndicate contended that there was an insufficiently "close causal nexus" between the rezoning measure (Local Law No. 6) and the legitimate public interests the town board sought to achieve. The Syndicate argued that this had been demonstrated as a matter of law because, in the opinion of the planning firm retained by the Mamaroneck town board, the same objectives the town sought to achieve (that is, to further open space, recreational opportunities and flood control) could be accomplished with some residential development permitted.

The court rejected the Syndicate's arguments, holding that Local Law No. 6 "easily" qualified as a valid regulatory denial of development pursuant to a generally applicable zoning law. It explained that because zoning the Syndicate's property for solely recreational use bore "a reasonable relation to the legitimate objectives stated within that law," the regulatory action substantially advanced those purposes.

The court acknowledged that the Mamaroneck town board had other less restrictive options to choose from in arriving at its ultimate conclusion with respect to zoning, but ruled that that was "irrelevant." It concluded, however, that as long as the method and solution the town board eventually chose "substantially advance[d] the public interest," the court could not substitute its own judgment for that of the town board – nor could it determine if, in regulating land use, the rezoning determination "was more stringent than one might reasonably conclude was necessary to further public objectives."

Districts Created

Many local governments have authorized recreation districts since *Bonnie Blair*. For example, the town of New Paltz created the "Town of New Paltz Wallkill River Recreation Overlay District" to serve the combined purposes of "recreation, open space preservation, floodplain management, wildlife protection and scenic resource preservation." The town of Big Flats amended its zoning law to permit recreation conservation districts to keep open areas

"in their natural, undeveloped, or unbuilt condition."

Most recently, the Long Island town of Brookhaven amended its zoning laws to create a recreation district "to permit golf courses including accessory uses and activities that recognize the unique relationship such courses have within a community, allowing commercial recreational opportunities while providing a desirable amenity."

The amended Brookhaven zoning law lists the permitted uses in the district – public or private golf courses and country clubs – as well as customary accessory uses, structures, and buildings including catering halls, clubhouses, driving ranges, health clubs, and spas. The amendment also includes provisions regarding lot size, setbacks, structure height, required netting, and outdoor storage.

Conclusion

Since *Bonnie Blair*, there has been a growing trend of local governments adopting recreation districts. The court's decision on the Syndicate's regulatory taking claim under the Fifth and Fourteenth Amendments has, for all practical purposes, eliminated that as an objection to recreational districts. Although other avenues of attack are available for property owners, it is clear that local governments that carefully study, plan, and create recreation districts to achieve legitimate environmental and planning goals should be able to withstand court challenges to those decisions.