

New York Law Journal

THIS WEEK LONG ISLAND

Tuesday, February 19, 2008

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Plat Restrictions Revisited

Last August, this column¹ discussed an issue certified by the U.S. Court of Appeal for the Second Circuit to the state Court of Appeals in *O'Mara v. Town of Wappinger*² that had the potential to adversely impact decades of land use determinations made by Long Island town and villages.

Long Island governments routinely include open space requirements and other development restrictions as part of the site plan approval process. Virtually all such restrictions are noted directly on the subdivision plats that are approved and these plat maps are routinely filed with the county clerk's office. However, the restrictions appearing on the plat maps are typically not recorded in separate writings and may not be found as part of a title search. The question raised in *O'Mara* was whether such restrictions that are only noted on plat maps are enforceable against subsequent purchasers.

Much to the relief of municipal governments on Long Island and throughout the state, the Court of Appeals recently ruled that restrictions noted on final plat maps, which are filed in the county clerk's office, are enforceable against subsequent purchasers.³ Had the Court ruled otherwise, the validity of restrictions imposed as part of land use decisions would have been in doubt.

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ZONING AND LAND USE PLANNING

A "plat" is a map describing a piece of land, and includes boundaries, lots, roads and easements. Town Law §276(4) references two types of plats: (1) preliminary plats, which are drawings that show proposed subdivision layouts, topography and drainage and proposed structures;⁴ and (2) final plats, which contain all the information required on preliminary plats plus any modifications to the proposal that are required by the local planning board at the time of approval.⁵

"Final plat approval" means the plat is in its final form and is signed by an authorized officer of the planning board pursuant to a planning board resolution that granted approval of the subdivision. This final plat will contain any conditions or restrictions imposed by the planning board resolution as part of the approval process.⁶

Final plat maps can be recorded in the

county clerk's office or in the register of deeds.⁷ Although it is common for final plat maps to be filed with the county clerk's office, the restrictions appearing on the plat maps are rarely separately recorded in the chain of title records.

The land restriction at the heart of the controversy in *O'Mara* dates back more than 40 years.

In the early 1960s, a proposal to construct a condominium complex over seven contiguous parcels was submitted to the Town of Wappinger's planning board. In December 1962, the planning board approved a preliminary layout for a complex, but conditioned its approval on the creation of permanent open space on two out of the seven parcels.

The planning board wanted these two parcels to act as buffer zones, and the words "Open Space" were written on the two parcels on the plat map.

In January 1963, the planning board approved the plat and its minutes for that meeting noted that no building permits would be issued for the two lots indicated as "Open Space" on the plat. The plat and planning board minutes were filed with the town and the plat was also filed with the county clerk's office, but not recorded.

Forty years later, when the parcels were sold at an in rem tax sales, the title report failed to find the "Open Space" restrictions. Interestingly, the parcels went in rem as a result of the town tax assessor increasing the assessment six-fold, noting in the assessor's records, "No reason for the very low value. Good buildable land."⁸

Two years after that purchase, a surveyor

working for the new owners examined the 1963 plat, found the "Open Space" notation, but ignored it. The surveyor did not include the "Open Space" notation on the survey it submitted to the town's building department to obtain building permits. The town building department issued the building permits.

The O'Mara Court noted that had the surveyor included the "Open Space" notation on the survey, the building department would have been alerted to the restriction.⁹ After one house was built and a second was in the planning stage, a descendant of the original developer raised the issue of the "Open Space" plat restriction with the town, and a stop-work order was issued. The current owners of the parcels sued the town in federal court, claiming the open space restriction was unenforceable.

Federal Rulings

The U.S. district court found in favor of the new owners, holding that the "Open Space" restriction was unenforceable under Real Property Law §291. It ruled that since the plat restriction was not "recorded," it was not enforceable against a bona fide purchaser.

The Second Circuit disagreed with part of the trial court's decision and found that Real Property Law §291 did not apply, as that section deals with conveyances of real property and the plat restriction was not a conveyance.

Rather, the circuit found that the plat approval in 1963 was done pursuant to Town Law §276, which requires the approved subdivision plat to be filed in the Office of the County Clerk or County Register. It further noted that Real Property Law §334 echoes this requirement.

The Second Circuit found no controlling authority in New York law on the enforceability of plat restrictions imposed by a subdivision plat under Town Law §276 on subsequent purchasers and certified the following question to the state Court of Appeals for the answer: "Is an open space restriction imposed by a subdivision plat under New York Town Law §276 enforceable

against a subsequent purchaser, and under what circumstances?"

High Court Ruling

New York's highest court answered the certified question in the affirmative and determined that an open space restriction placed on a final plat pursuant to Town Law §276, when filed in the county clerk's office pursuant to Real Property Law §334, is enforceable against a subsequent purchaser.

In so ruling, the Court discussed the requirements of Town Law §276 and the purpose of Real Property Law §334. The latter statute provides that property subdivided into separate lots cannot be offered for sale to the public without filing of a map in the county clerk's office or register of deeds where the property is located. That statute also provides that no plat of a subdivision can be filed until it is approved by the planning board and such approval must be noted directly on the plat. The Court of Appeals found that this statutory scheme provided notice to the public of these restrictions, and was used throughout the state.

Significantly, the Court concluded its decision by recognizing the principle of "local control," observing that towns are separately bestowed with the authority to regulate land use within their borders.¹⁰ The Court added that this grant of authority is "broad" and encompasses a town's ability "to impose reasonable conditions in the course of approving a subdivision".¹¹ It then declared that the ability to impose such conditions on the use of land through the zoning process "is meaningless without the ability to enforce those conditions, even against a subsequent purchaser."

Conclusion

Towns and villages on Long Island that have imposed restrictions on subdivisions by placing the restrictions directly on the plat can now rest assured that these restrictions are effective, provided that the plat is adopted and filed in accordance with Town Law §276 and Real Property Law §334.

In addition, purchasers of land cannot solely rely on chain of title documents to determine land use restrictions. They must also look at the historical plat maps to ensure that their intended use of the property is not prohibited.

Had the O'Maras searched the plat maps filed in the county clerk's office prior to purchasing the lots, they would have found the open space restriction, a caution to those looking to purchase and develop previously subdivided property.



1. Charlotte A. Biblow, "Court of Appeals to Answer Question on Plat Restrictions," *Zoning & Land Use*, NYLJ, Aug. 14, 2007, at 24.

2. 485 F.3d 693 (2d Cir. 2007).

3. 9 N.Y.3d 303 (2007).

4. Town Law §276(4)(b).

5. Town Law §276(4)(d).

6. Town Law §276(4)(f).

7. Id.

8. 9 N.Y.3d at 303.

9. 9 N.Y.3d at 303.

10. See Town Law §261.

11. See Town Law §276; see also *Koncelik v. Planning Bd. of the Town of E. Hampton*, 188 A.D.2d 469, 471 (2d Dep't 1992).