ZONING - MASSACHUSETTS

DelPrete v. Ruble

Massachusetts Land Court., Department of the Trial Court, Plymouth County - July 2, 2013 - Not Reported in N.E.2d - 2013 WL 3477209

Plaintiff obtained a building permit for his property despite the fact that the lot does not comply with the lot size, frontage, or lot width requirements of the zoning bylaw in the Town of Rockland. Plaintiff proceeded to construct a single-family house on the property, and obtained a certificate of occupancy. After zoning violations came to light, plaintiff sought and was denied a variance, and the Town sought to enforce its zoning bylaw. It was conceded that, absent a variance, the building is not allowed under current zoning.

The sole issue remaining for decision is whether laches or some other equitable doctrine operates in this case to either (1) bar the Town from enforcing its own zoning bylaws, or (2) require the Board to grant a Plaintiff a variance, notwithstanding that the provisions of G.L. c. 40A, § 10 are not met. The court concluded that these arguments are legally unavailable to Plaintiff.

There is a formidable line of cases holding that laches, estoppel, or other equitable doctrines will not bar a municipality from enforcing its bylaws. This is because the zoning power exercised by a municipality for the public interest may not be forfeited by the actions of one person, even acting in his or her capacity as a municipal officer. This is true even where there has been a substantial financial investment.

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