

The Times

Ruling puts West Windsor development on new footing

Sunday, January 24, 2010

BY MEIR RINDE

West Windsor officials spent years fighting over a slew of hot-button issues as they crafted a redevelopment plan for Princeton Junction, but they managed to avoid tangling over one particularly delicate topic: eminent domain.

Now, however, even though the township does not want to take any private land, that issue could end up determining whether the plan to build housing, stores and office space around the train station remains in place or goes back to the drawing board.

The threat comes from developer Steve Goldin, who wants to build much more housing than the township will allow on his 24-acre plot near the station. His company, InterCap Holdings, has proposed building 1,440 residential units on his land alone, while the plan sets an upper limit of 500 units for the whole 350-acre redevelopment zone.

Mercer County Superior Court Judge Linda Feinberg agreed this month to let a legal challenge to the plan by Goldin to go ahead, even though she was not persuaded by his arguments that the plan unconstitutionally limits the construction of needed housing, or tries to prevent children from living in West Windsor.

The township famously lost a battle eight years ago to stop a 1,165-unit Toll Brothers development, after the state Supreme Court agreed it had failed to meet its affordable housing obligations. But township officials now boast that West Windsor is a statewide leader in building low- and moderate-income housing.

In addition, Feinberg wrote in her ruling that Goldin's argument that the redevelopment plan was improperly based on a fear of rising school costs does not rise to the level of "important and novel constitutional issues."

Rather, she said it appeared that the township's initial study did not give substantial evidence for why the area was in need of redevelopment, a critical finding that the Town Council subsequently adopted in December 2005. The study, she wrote in her Jan. 15 ruling, is "ripe with constitutional infirmities."

In addition, the judge was very concerned that West Windsor's planning board never notified landowners in the development area that their property could potentially be subject to condemnation.

Goldin's successful use of that argument to keep Feinberg from throwing out the case drew strenuous complaints from township officials, who say the condemnation issue has nothing to do with them.

"As a matter of fact, in our redevelopment plan we make it very clear we have no desire to acquire private properties for this economic development," Mayor Shing Fu Hsueh said recently.

The township's attorney, Michael Herbert Sr., accused Goldin of misusing the legal process to shape zoning to his liking.

"One of the ways he did it was by seizing on a decision that came down three years ago, which says at the very beginning of the whole process, you have to send out notices to any people whose properties might be condemned," he said.

Towns preparing for redevelopment must now notify affected landowners that their properties could be seized, even if their redevelopment plans pre-date the court decision by years and do not contemplate any seizures.

Since the West Windsor landowners were never notified and no condemnation hearings will ever occur, they are doomed to be deprived of their constitutional right to notification, Feinberg said.

Accepting the township's reasons for ignoring the problem "would be tantamount to condoning the unconditional use of redevelopment strategies and standards at the expense of the public and of property owners," she wrote.

West Windsor is not the only municipality facing problems because it did not deal with the 2008 eminent domain ruling.

The owner of a gas station on Clinton Avenue in Trenton has sued the city over its Train Station Redevelopment Area, and the City Council has directed the planning board to re-examine the redevelopment designation to make it comply with the court decision.

Trenton's housing and economic development director, Jerome Harris, said he has spoken to planning and development staff in other cities and found they are aware of the 2008 court decision.

"Other communities are systematically going through their various redevelopment plan to make certain that the plans they approved previously cannot be challenged, so the projects can move forward," he said.

If Goldin wins his case either because of the redevelopment study's deficiencies or the condemnation decision, it's unclear if his housing proposal would benefit. But those issues may be incidental to the goal of pressuring West Windsor to increase the number of houses in its plan, in exchange for a settlement of the case.

Goldin declined to be interviewed, but issued a statement that said, in part, "We remain open to a settlement with the township, provided those discussions are based on economic reality for the future of the area surrounding the Princeton Junction train station."

With the words "economic reality," Goldin referred to a fierce debate on how large a transit-oriented development must be to succeed.

It's difficult to calculate the right number of housing units, but there have to be enough residents to support retail at a site and persuade businesses to relocate their offices there, said Dianne Brake, a West Windsor resident and president of the land-use nonprofit PlanSmart NJ.

The project must be able to attract developer interest, though Herbert argued that Goldin is wrongly trying to manipulate zoning to maximize his profit.

In addition, under the state's Smart Growth principles, the township is also obligated to consider the benefits to New Jerseyans outside of West Windsor, Brake said. Only transit-oriented developments that let large numbers of people walk or take trains and buses to work will help prevent the growth of regional traffic congestion, she said.

Brake said she was sorry residents' vehement opposition to more residential construction led the township to adopt lower housing limits.

"I'm very sympathetic to developers that have to go to lawsuits, because we do have a system with an inordinate amount of control," she said.

Even as the legal battle carries on, West Windsor continues to implement its redevelopment plan. Hsueh pointed out that the township approved the first project in the redevelopment zone, the conversion of a historic barn at Sherbrooke Drive and Route 571.

"They're going to use the whole structure and make additions, and it's going to be a beautiful office building," Hsueh said.

The township may have plenty of time for more such announcements before the future of InterCap's property is resolved. Jerry Fennelly, a Hamilton commercial real estate broker who tracks development along the Route 1 corridor, said the legal skirmish that Goldin won this month is only the first in a struggle that could last years and benefit both sides' attorneys as much as anyone else.

"If you look at West Windsor's history, with Toll Brothers and others, it'll be a long time," he said. "It'll be the fortitude of one person who wants to succeed more than the other. How much does the guy want to spend, and how much does the town want to spend?"

Contact Meir Rinde at mrinde@njtimes.com or (609) 989-5717.