

Mass. Appeals Court Clarifies How Zoning Cases Can – and Can’t – Be Settled

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The Massachusetts Appeals Court recently decided that a settlement agreement resolving a zoning case brought by the Town of Bourne did not prevent neighbors from obtaining zoning enforcement inconsistent with that settlement. The case, [Stevens v. Zoning Board of Appeals of Bourne](#), involved the use of a property in a residential zoning district as a wedding venue (commercial uses were not allowed). There were two sequential cases involving challenges to the use.

The first case arose from the building inspector’s cease and desist order to the property owner requiring a complete halt to the commercial use. The Town then brought a case in Land Court to enforce the order. That case was settled by an agreement between the Town’s administrative board and the property owner. The settlement agreement included dismissal of the Land Court case with prejudice. Critically, the Land Court did not decide whether the challenged use was lawful. The Building Inspector issued a new cease and desist order consistent with the settlement agreement that allowed limited commercial use of the property.

Neighbors appealed that new order to the Zoning Board of Appeals (ZBA), which decided that any commercial use was unlawful and that the original cease and desist order must be reinstated. The property owner appealed the ZBA’s decision to the Superior Court and argued that the neighbors were bound by the settlement agreement. The Superior Court disagreed and upheld the ZBA’s decision. The Appeals Court found that the settlement agreement did *not* bind the neighbors or resolve the dispute over the lawfulness of the use. In the Appeals Court’s view, the Town administrators had the authority to bring and resolve the first case. However, they had no authority to change the zoning laws without following statutory procedures or to grant zoning relief as part of a settlement agreement. Only the ZBA has the power to grant zoning relief and interpret the zoning laws, and its authority is limited by the zoning laws themselves.

This case highlights two important rules for settling zoning disputes. First, if there is no way to render a use or building lawful under the zoning laws, then no settlement agreement can achieve that result either. Second, most towns give their zoning boards of appeals the sole authority to interpret zoning laws and grant relief from their strictures. If the settlement agreement involves interpretation of zoning laws or zoning relief, the settlement should involve the zoning board of appeals. How to bring that board into the dispute will depend on the situation and zoning laws at issue, but one should not assume that the zoning board of appeals will agree with the building inspector or a municipal

administrative body. Also, even if the zoning board of appeals agrees to settle, its decisions are subject to appeal by “persons aggrieved.”

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