

Municipalities - zoning

Where property owner proposing new building fully complied with all requirements of applicable planned development ordinance, city planning commissioner was required to grant approval needed for building permit; trial court erred in denying property owner's petition for writ of mandamus directing commissioner to issue required approval letter.

The Illinois Appellate Court, 1st District, 4th Division, has reversed a ruling by Judge Julia M. Nowicki.

Plaintiff 1350 Lake Shore Associates owned property at 1320-30 Lake Shore Drive in Chicago. On April 5, 1978, the plaintiff, through its agent, Draper and Kramer Inc., filed an application to amend the property's zoning from "R8 General Residence" to a residential planned development, which would permit the construction of a high-rise apartment building on the lot.

On Nov. 14, 1978, the Chicago City Council approved the requested amendment and established "Residential Planned Development 196 (RPD 196)." The City Council approved the construction of a 40-story, 196-unit apartment building on the property.

After securin

g passage of the plan, the plaintiff decided to delay development of the property.

In 1996, the plaintiff began investigating the possibility of developing the property in conformity with RPD 196 and ultimately decided to launch the project. Nearby residents, however, objected to the proposal. The alderman for ward where the project was planned, introduced an ordinance to prohibit the proposed building as an impermissible use of the property.

The next day, the project architect submitted plans to the city Department of Planning and Development, seeking the issuance of a "Part II" approval letter, which is required before a building permit can be issued.

"Part II" refers to Article 11 of the Chicago zoning ordinance, which establishes the procedures and substantive standards with respect to the issuance of zoning certificates. Part II approval is a prerequisite to the issuance of a zoning certificate, which in turn is needed to secure a building permit.

After the architect submitted the plans in December 1997, the commissioner of the Department of Planning and Development took no action. The attorney for the project wrote to an assistant commissioner in March and April 1998 and asked for the issuance of the approval letter.

On April 29, 1998, the City Council approved the "down-zoning" ordinance, which was introduced by Alderman Charles Bernardini. The ordinance became effective May 20, 1998.

In April 1999, the property owner filed a three-count complaint seeking a writ of mandamus directing the commissioner to issue the plaintiff a Part II approval letter. Count 2 sought injunctive relief and a declaration that the down-zoning ordinance did not affect the plaintiff's right to develop the property in conformity with its earlier plans. Count 3 sought a declaration that the down-zoning ordinance was void.

When the case proceeded to trial in January 2000, the commissioner still had not responded to the Part II submittal.

Following a trial on the first count, the trial judge ruled in favor of the city, finding that the plaintiff could not reasonably rely on the probability that it would obtain a Part II approval.

On appeal, the plaintiff argued that the trial judge abused her discretion by finding that the plaintiff could not have reasonably relied on the issuance of a Part II approval letter.

The appeals court reversed. The court said section 11.11-3(b) of the Chicago zoning ordinance mandates that the planning commissioner review every application for a permit or license within the planned development boundaries to determine whether the proposed use complies with all provisions of the planned development ordinance. A property owner is entitled to a Part II approval letter when its property is located within a planned development and the proposal meets all requirements of the applicable planned development ordinance, the appeals court said.

The court said all the parties here agreed that the plans the plaintiff submitted in December 1997 complied fully with the requirements of RPD 196.

The city and nearby residents who intervened argued, however, that on the date the Part II submittal was filed, the property was not located in a planned development because RPD 196 had expired.

The appeals court disagreed. The court said that on Dec. 11, 1997, the date the Part II application was filed, RPD 196 was in effect and the proposed plans fully complied with the ordinance. Therefore, the court said, the plaintiff established a clear right to the issuance of a Part II approval letter.