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Wood v. Zoning Bd. of Appeals., 784 A.2d 354 (Conn. 2001)

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benefited owner(s) in accordance with the Restatement test. In such a proceeding, a judge would apply the Restatement rule to determine whether the planned changes pass the three-prong test.

The three-prong test requires the burdened owner to present a prima facie case that the alteration would cause no damage under the Restatement rule. A successful showing would shift the burden to the benefited owner to establish damage. If the burdened owner made a showing of no damage and the benefited owner's evidence was insufficient to rebut, the court would enter a declaration for the burdened owner. However, if the benefited owner successfully demonstrated damage, the court should decline to permit the alteration.

In evaluating damage, or the absence of damage, the trial court must not only look at the operation of the ditch for the benefited owner, but also at the maintenance rights associated with the ditch. In addition, the water provided to the ditch easement owner must be of the same quantity, quality and timing as provided under the ditch owner's water rights and easement rights in the ditch.

Returning to the case at hand and recognizing that their opinion identified a remedy previously not clear in law, the supreme court remanded the case to the trial court to determine whether the Club's alteration of the easement was reasonable and otherwise satisfied the Restatement criteria. If the alterations did not meet the test, the court must order restoration. Further, the Ranch was entitled to an order allowing it to inspect, maintain, operate and repair the ditch easement and water structure, irrespective of allocation of costs and burdens of maintenance that might form part of equitable relief.

John A. Helfrich

CONNECTICUT

Wood v. Zoning Bd. of Appeals., 784 A.2d 354 (Conn. 2001) (holding spring water collection, storage, and transportation is not a permitted agricultural use within Somers Town Code 214-4).

Hillside and co-plaintiffs ("Hillside") appealed the trial court's decision to uphold a cease and desist order the zoning Board of Appeals in the Town of Somers ("Board") issued following judgment that collecting, storing, and transporting spring water for human consumption is not a permitted agricultural use within A-1 zoning districts, pursuant to Somers Town Code provision 214-4. The court concluded Hillside failed to prove the Board's statutory interpretation was illegal, arbitrary, or an abuse of its discretion. Hillside also claimed the court should not have decided whether the use was legally nonconforming, because the Board failed to address such issue initially, and, thus, the court should have remanded it to the Board.

Applying Somers zoning regulations, the appellate court's

determination of the Board's "reasonable and rational intent" utilized to interpret the statute, is plenary. Though Somers Town Code provision 214-98 permitted farms on A-1 zoned property, Hillside's use was not included within provision 214-4's "agriculture," or "cultivation of the land" definitions. The court distinguished spring water collection because it does not require soil preparation "for the purpose of seeding the land or growing crops," and further, because spring water cannot be planted, grown, or harvested, but only collected, requiring no soil to "grow or nurture some living thing."

The court further rejected Hillside's contention that collecting spring water qualified as an "agricultural" or "farming" use because it entailed "harvesting any agricultural . . . commodity," under General Statutes § 1-1(q). Unpersuaded, the court was bound by Somers Town Code 214-4's express "agriculture" definition and could not defer to this statutory definition. Hillside further argued the legislature amended General Statutes § 19a-341 to classify spring water collection as an agricultural activity. However, the court maintained the statute bore no relevance to "agriculture" in provision 214-4, or to applicable zoning regulations. Rather, the statute simply states spring water cannot be collected in a manner constituting a nuisance. Furthermore, the court found unacceptable Hillside's contention that the use was permitted because it took place on a farm, because it is not an "accessory use" incident to a permitted agricultural use within 214-4, but rather activity "having no relation to the farm itself."

However, the court deemed the Board failed to initially address whether the activity was legally nonconforming. Thus, the trial court's determination of such issue was improper, as the factual record is insufficient for the appellate court to make its own determination. Therefore, the case was remanded to the trial court with directions to remand this issue to the Board. The judgment was otherwise affirmed.

Robert Lykos

FLORIDA

Quiles v. Boynton Beach, 802 So. 2d 397 (Fla. App. 2001) (holding the city of Boynton Beach's decision to add fluoride to the city's potable water supply did not violate a citizen's right to refuse medical treatment under Article I, section 23 of the Florida Constitution).

The Boynton Beach City Commission voted to add fluoride to the city's potable water supply. Jesus F. Quiles ("Quiles"), a citizen, filed a suit against the City alleging the fluoridation measure violated his right to refuse medical treatment under Article I, Section 23 of the Florida Constitution. The circuit court granted the city of Boynton Beach's ("Boynton") motion to dismiss with prejudice. Quiles appealed to the Court of Appeals of Florida, Fourth District, which affirmed the circuit