

The McLean Case: The Land Court Decision

By Nelson E. Bolen

On May 26, 2000, Judge Mark Green of the Massachusetts Land Court issued his decision in the lawsuit concerning the rezoning of the McLean Hospital land. The headline in the *Belmont Citizen-Herald* the following week proclaimed “Land Court OKs McLean rezoning.” However, it is important to understand what was and what was not decided.

More than half of Judge Green’s 25-page decision reviewed the factual history of the McLean rezoning. Both sides in the lawsuit had previously agreed that no material facts were in dispute and that the case could be decided on the basis of law without a trial.

The heart of the decision is the seven pages that Judge Green devoted to the central issue – the allegation of illegal contract zoning. (The remaining four pages were devoted to various procedural issues raised by the intervenors.) The judge clearly gave great weight to the fact that the rezoning had been approved by the town:

... it is not the role of the courts to set aside the collective judgment of a two-thirds majority of the town meeting and the general electorate at the behest of a few individuals who suggest that a different approach might be better.

Judge Green acknowledged that this case constitutes contract zoning:

If the presence of a contract between a private landowner and a municipality, arising incident to the rezoning of the landowner’s property, constitutes illegal contract zoning, then the actions of Belmont and McLean in the instant case constitute such contract zoning. However, despite the analytic simplicity implied by the ‘contract zoning’ label, whether there has been an illegal contract zoning depends not on the mere presence of a contract, but on the relationship of the contract to the subject matter of the rezoning and the legislative process by which the municipality approved the rezoning.

With respect to the legislative process, Judge Green noted that more than two-thirds of the town meeting members and more than two-thirds of the voters in the referendum approved the rezoning. He went on to observe: “The summary judgment record provides ample evidence to support that decision, though it is possible a contrary conclusion by the voters could also have been considered reasonable.”

In other words, the question of whether the rezoning was in the best interests of the town is debatable.

There were two previous court cases in Massachusetts that addressed contract zoning and thereby establish precedents – *Sylvania Electric Products Inc. vs. Newton* (“Sylvania”), and *Rando vs. Town of North Attleborough* (“Rando”). A key element of the *Rando* case, in which the challenged rezoning was upheld, was that the “ancillary agreements” were placed in escrow pending the vote on the proposed rezoning. As the Belmont intervenors pointed out, that was

not done in the McLean case. Judge Green dismissed that argument: "... I do not read Sylvania or Rando to impose such a procedural 'escrow' requirement."

One of the key issues raised by the intervenors was the integral relationship between the McLean rezoning amendment and the Memorandum of Agreement. The intervenors argued that the Memorandum of Agreement – the "sweetener" in the McLean deal – contained provisions that were contrary to the public interest and in violation of various laws. Judge Green observed:

By the very nature of the arrangements approved by the town meeting and Belmont voters, the possibility exists that all or some portion of the memorandum of agreement might be unenforceable, might be set aside (as in bankruptcy proceedings) or might not be realized for any one of a number of other possible reasons; the rezoning amendment stands independent of all such contingencies. Whatever concerns might exist regarding the prudence of such an approach do not derogate from the validity of the rezoning if it serves a public purpose.

In other words, there is no guarantee that the town will get what it thought it was to get.

Judge Green did not deal with the Memorandum of Agreement at all in this decision:

The enforceability of the memorandum of agreement is not presented in this action, and I do not consider it. Similarly, I need not address the criticisms intervenors direct to the wisdom or propriety of various provisions of the memorandum of agreement, as they do not bear on the validity of the rezoning amendment.

Thus, Judge Green did not address the intervenors' claims that such a provision as the one exempting all roads in the McLean District from the requirements of the Board of Survey bargained away the town's police powers, a reason that contract zoning is held to be illegal.

What does this all mean? A number of issues raised by the intervenors were not addressed in Judge Green's decision, and the judge's interpretation of previous case law is debatable. The intervenors had 30 days from the date of the judgment to appeal the decision. This appeal would have to be on the grounds that the judge erred in interpreting and applying the law, since the facts were not at issue.

Nelson Bolen, a retired engineer, has lived in Belmont for thirty-three years and is the treasurer of the Belmont Citizens Forum

Summary: *Judge Green decided that the overriding consideration is the fact that the town approved the McLean rezoning amendment, regardless of whether the rezoning is good or bad.*