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History Shaping The Future

Wayland Historic Commission Waylays Redevelopment Project

At Heart Of Court Battle Is Commissions' Ability To Dictate Planning

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Most fights that pit a developer against a small band of local activists are rich in “Not In My Back Yard” drama, and the ruckus surrounding the Wayland Town Center project is no exception. But its outcome has ramifications far beyond small-town politics.

The case, which centers around the timing of road work at one intersection in Wayland, could reshape the way projects are permitted and built in historic districts across the state.

At issue is the question of whether historic district commissions in Massachusetts are merely advisory and custodial boards, or whether they may dictate planning and phasing conditions to developers.

Twenty Wayland LLC, a holding company controlled by Providence-based KGI Properties, is currently battling the Wayland Historic District Commission in Middlesex Superior Court. Twenty Wayland has permits to redevelop a vacant commercial campus into a 373,000-square-foot retail, residential and office project it calls Wayland Town Center.

The project site formerly housed operations for Raytheon and Polaroid. Twenty Wayland bought the vacant 57-acre site for \$23.4 million in August 2005, with \$25 million in financing from Bank of America. One of the development's original sponsors, the Boston-based Congress Group, exited the project last year.

The ongoing lawsuit in Middlesex Superior Court centers on development permits and roadwork. Twenty Wayland's local and state environmental permits require it to perform roadwork at an intersection down the street from the development site before the developer can break ground on the project itself. A settlement with former project opponents laid down similar stipulations.

The Town Center development is not inside the town's historic district, but the intersection it's bound to improve is.

But when the Wayland Historic District Commission signed off on the roadwork, the commission said it would only let Twenty Wayland work on the intersection after the completion and occupation of the Town Center project's first phase, a 94,000-square-foot grocery store and associated retail.

The historic commission acknowledged that its phasing directive was at odds with the project's other permits, and instructed the developer to re-permit those other permits to make them consistent with the commission's wishes. Wayland's selectmen refused to budge from their insistence that the roadwork happen before any vertical construction, at odds with the commission's wishes to build before making road improvements, so Twenty Wayland sued to overturn the historic commission's stipulations.

The Wayland Town Center project has attracted scads of controversy since it was first proposed in 2005. Wayland's Town Meeting approved the project in 2006, but permitting and mitigation talks dragged on for years. The development has encountered legal opposition from Wayland town residents, and from the neighboring town of Sudbury. When Twenty Wayland sued the historic commission last year, Wayland's town administrator and board of selectmen refused to release town funds for



the commission's legal defense; the commission had to get court approval for its pro-bono attorney.

Twenty Wayland's ongoing lawsuit against the historic commission ratchets up the stakes around the project considerably.

At a recent hearing, the developer's lawyer, Daniel Dain, said the historic commission knows its phasing requirement was "directly contradictory to a whole series of permits and agreements. Effectively, with inconsistent conditions, we can't do the project at all."

"It sounds like the commission has you between a rock and a hard place," the judge replied.

In court filings and at the recent hearing, Dain has argued that the Wayland historic commission can tell it how it wants road improvements to look, but that it has no power to dictate when the improvements happen.

That's why the Wayland historic commission's road work directive is such a potential game changer. Boards that oversee historic districts in Massachusetts have long operated as aesthetic advisors only, although there's little, if any, case law defining their roles as such. If the judge in the Wayland case leaves Twenty Wayland saddled with the historic commission's timing provision, it would essentially hand certain planning powers to historic commissions. And that would substantially complicate what can already be a tortuous permitting process for developers.

"The crux of the whole case is that the timing condition is beyond the authority of a historic commission to issue," Dain said at the hearing. "There is no role for the commission to second-guess the decisions made by the planning board. It's just not their role. It's beyond the authority of a historic commission to determine when things happen."

Gretchen Schuler, who chairs Wayland's historic district commission, said she can't remember a historic board ever telling a developer when to build, though she did stand behind the phasing mandate her board handed down.

"This will have a negative impact forever, period," she said. "Our mandate is to preserve the district. We all know about the problems with the economy. Once they started phasing it, if they weren't able to build it for five or ten years, we didn't see any reason to dispense with the district at this time."