

LAND COURT
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COMMONWEALTH OF MASSACHUSETTS
LAND COURT DEPARTMENT OF THE TRIAL COURT
MIDDLESEX, SS. CASE NO. 2020 MISC. 000

QUAIL RUN CONDOMINIUM TRUST, also known as The Villages at Quail Run and as Quail Run Condominium, WESTRIDGE CONDOMINIUM TRUST, also known as Westridge Condominiums, HUDSON CHILDREN'S CENTER, INC., and RALPH E. STEVENS AS TRUSTEE OF THE REED HUDSON REVOCABLE TRUST, Plaintiffs

vs.

INTEL MASSACHUSETTS, INC., Defendant and
TOWN OF HUDSON Nominal Defendant

22 MISC 000545



COMPLAINT FOR RULING UNDER G.L. c. 240, § 14A

NOTE: All recorded documents referred to below are recorded in Middlesex Registry of Deeds.

1. Plaintiff Quail Run Condominium Trust, also known as The Villages at Quail Run, (Declaration of Trust recorded January 28, 1987, at Book 17820, Page 266, Master Deed of Quail Run Condominium recorded January 28, 1987, at Book 17820, Page 242) is a residential community of 150 attached homes for people ages 55 and over, off Reed Road on Autumn Drive, Strawberry Lane and Rotherham Way in Hudson, Middlesex County, Massachusetts.

2. Plaintiff Westridge Condominium Trust, also known as Westridge Condominiums, (Declaration of Trust recorded March 21, 2008 at Book 50919, Page 084, Master Deed of Westridge Condominium recorded March 21, 2008 at Book 5019, Page 048) is a residential community of 136 homes for people ages 55 and over, on Westridge Road, Dyson Circle, Hastings, Road, Townsend Road Stevens Road, Barretts Road in Hudson, Massachusetts.

3. Plaintiff Hudson Children's Center, Inc., a duly organized and existing Massachusetts corporation with its principal location at 25 Reed Road in Hudson, Massachusetts, offers programs for infants, toddlers, preschool age children, and kindergarteners.

4. Plaintiff Ralph E. Stevens, as Trustee of The Reed Hudson Revocable Trust (Trust Amendment/Restatement recorded July 15, 2019 at Book 72920, Page 133), is owner of 25 Reed Road, Hudson, MA 01749 (Deed recorded April 11, 1984, at Book 15517, Page 274).

5. Defendant Intel Massachusetts, Inc. ("Intel") is a duly organized and existing Delaware corporation registered with the Secretary of the Commonwealth, Corporations Division, to do business in Massachusetts with its principal office at 2200 Mission College Blvd., RNB-6-91, Santa Clara, California 95054.

6. Defendant Intel owns the real property, a former factory, at 75 Reed Road in Hudson, described in the deed recorded May 18, 1998 at Book 28586, Page 374 (the "property").

7. Nominal defendant Town of Hudson is a duly organized and existing Massachusetts municipal corporation, with its Town Hall at 78 Main Street, Hudson, MA 01749.

8. A site plan review application dated July, 2022 was filed with the Hudson Planning Board by defendant Intel and by Portman Industrial LLC pursuant to Section 7.17 of the Town of Hudson Zoning Bylaw (the "Bylaw")."¹

9. Plaintiffs, a childcare center and two residential condominiums for residents aged 55 and over with 286 dwelling units, are abutters to the former factory site at 75 Reed Road in Hudson, owned by defendant Intel. They will be adversely affected by proposed redevelopment of the property as a "distribution and logistics warehouse, [where] goods are delivered to the site, loaded off of the trucks, organized and set up to be reloaded onto trucks and sent offsite."²

10. A proposed new building on the property "will consist of 1,284,640 [one million, two hundred eighty-four thousand, six hundred forty] square feet of building space

¹ "Application for Site Plan Review, July 2022, 75 Reed Road, Hudson, MA" at page 1. Portman Industrial LLC has not been named as a defendant because it has failed to register as a foreign corporation doing business in Massachusetts, in violation of G.L. c. 156D, §§ 15.02 & 15.03.

² Id at page 19.

[approximately 29.5 acres], with 190 loading bays, trailer parking for approximately 540 trailers and approximately 447 employee parking spaces.”³

11. Defendant Intel’s site plan review application claims that “The proposed use as a distribution warehouse is considered a Permitted Use as a premises for industrial activities.”⁴ That conclusory assertion is not supported in the application by any facts or citation to legal authorities.

12. Defendant Town of Hudson Executive Assistant (i.e. the town administrator) stated in a “Statement on the Proposed Intel Redevelopment” dated October 6, 2022 that “[t]he Reed Road site, and the adjacent areas, are zoned industrial / manufacturing and therefore, the proposed project to develop a logistics warehouse operation is an allowed use by-right under the town’s Zoning Bylaws and is subject to site plan review approval from the Planning Board.”

13. The proposed actual use of the property is not being fully disclosed by defendant Intel’s site plan review application documents, making it impossible to make an accurate determination whether the proposed use really is permitted under the Bylaw.

14. Defendant Intel admits “certain assumptions have been made about the potential uses of the facility” because “The building is being designed and entitled on a speculative basis to allow the Applicant to market the project and seek a tenant.”⁵

15. The specific nature of the “certain assumptions” referred to in the preceding paragraph, and the specific facts supporting those assumptions, have not been disclosed by the site plan review application.⁶

³ Id. at page 7.

⁴ Id. at page 6.

⁵ Id. at page 7.

⁶ Pretrial discovery will be necessary to elicit that information.

16. Based on the limited information available, it appears the proposed use of the property is commercial rather than industrial, which does not qualify as a "Permitted Use" under Bylaw Section 5.5.1.1 allowing "Buildings, structures and premises for industry and manufacturing."

17. No manufacturing is being proposed for the property.

18. Defendant Intel claims "Because the proposed redevelopment is a permitted use in the zoning district, the project will require Site Plan Review form the Town of Hudson Planning Board in accordance with Section 7.1.7 of the Town of Hudson Zoning Bylaw." That statement ignores the right of the Planning Board to make a threshold determination concerning whether or not the proposed use really is one allowed by right under Bylaw Section 5.5.1.1.

19. Bylaw Section 7.1.7.5, entitled "Compliance and Impact Statement" states as follows:

Each site plan review application submitted for approval under this Section, shall include a statement explaining how compliance with each sub-section has or will be achieved. The statement shall also describe potential impacts of the proposed development, compare them to the impacts of uses which are or can be made of the site without a requirement for site plan review. Identify all significant positive and adverse impacts and propose acceptable prevention or mitigation of adverse impacts. The impacts should include but not be limited to traffic and environmental.

20. The reference to "each sub-section" in Bylaw Section 7.1.7.5 quoted above includes but may not be limited to Bylaw Section 7.1.7.3(d) which states as follows:

In considering an application, it shall be assured that, to a degree consistent with a reasonable use of the site for the purpose permitted or permissible by the regulations of the district in which it is located, that there is adequate:

- 1) Protection of the adjoining property against detrimental or offensive uses on the site.
- 2) Convenience and safety of vehicular traffic and pedestrian movement within the site and in relation to adjacent streets, property and improvements.
- 3) Methods of disposal of sewage, refuse and other wastes resulting from uses

permitted or permissible on the site and methods of drainage for surface water.

- 4) Space for off-street parking, loading and unloading of vehicles, goods, products, materials and equipment incidental to the normal operation of uses permitted or permissible.
- 5) Control of lighting, sound emissions and odor emanating from the site and any other condition not in harmony with the intent and purpose of the By-Law.

21. Bylaw Section 7.1.7.7(a) states (bold face type and underlining added for emphasis): “The Planning Board shall approve an application based on its review, **if the Board finds that the proposed development is in conformance with this By-Law.**”

22. The site plan review application for the property cannot be approved by the Hudson Planning Board unless the Board finds that all site plan review requirements in Bylaw Sections 7.1.7.5 & 7.1.7.3(d) have been satisfied.

23. The site plan review application for the property can be approved by the Hudson Planning Board if, and only if, the Board finds that all site plan review requirements in Bylaw Sections 7.1.7.5 & 7.1.7.3(d) have been satisfied.

24. Under Zoning Bylaw Section 7.1.7.7(a), there is no discretion for site plan review approval **only if** (i) all Zoning Bylaw requirements are satisfied, and (ii) the Planning Board “finds that the proposed development is in conformance with this bylaw.”

25. In August, 2022, Hudson Planning Board members were given a memorandum by the Citizen Planner Training Collaborative, setting forth the misleading inaccurate conclusory assertion that “Uses available as of right, subject only to site plan review, cannot be stopped.”

26. Application of Bylaw Section 7.1.7 “Site Plan Review” to the property requires a determination of exactly what is the application to defendant Intel’s property of the particular wording of Bylaw Section 7.1.7.7(a) quoted above.⁷

27. The Land Court has jurisdiction over this action under G.L. c. 240, § 14A.

WHEREFORE, plaintiffs pray that the Court adjudicate the application to defendant Intel’s property of the above cited and quoted provisions of the Hudson Zoning Bylaw, including but not limited to adjudicating as follows:

- (A) The proposed use (once the actual proposed use is determined through pretrial discovery) is not one permitted by right under the Bylaw;
- (B) The Bylaw requires, or at a minimum authorizes, denial of site plan approval unless the Hudson Planning Board “finds that the proposed development is in conformance with this bylaw.”
- (C) As applied to the Hudson Zoning Bylaw, the non-discretionary aspect of site plan review comes into operation if and only if the Hudson Planning Board “finds that the proposed development is in conformance with this bylaw.”

⁷ For a discretionary special permit, the rule was laid down with these words in *Davis v. Zoning Board of Chatham*, 52 Mass. App. Ct. 349, 355-356 (2001):

Even if the record reveals that a desired special permit could lawfully be granted by the board because the applicant's evidence satisfied the statutory and regulatory criteria, the board retains discretionary authority to deny the permit, so long as that denial is not based upon a legally untenable or arbitrary and capricious ground [citations omitted].

For zoning special permits or variances, which are governed respectively by the State Zoning Act, G.L. c. 40A, §§ 9 & 10 respectively, prior court decisions have more precedent value than for site plan review. Site plan review is not mentioned in G.L. c. 40A. Site plan review is entirely a creation of local zoning bylaws, which means that every case turns on the wording of a particular local zoning bylaw.

(D) Plaintiffs respectfully request that the Court make such other and further adjudication concerning the validity or application to the Intel property of the Hudson Zoning Bylaw as the Court deems just in the circumstances.

(E) Plaintiffs also pray for an award of the costs of this action.

Plaintiffs by their attorney,

Dated October 18, 2022

/s/ Michael Pill

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