

Bond Case Briefs

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ZONING - MASSACHUSETTS

Reynolds v. Zoning Bd. of Appeals of Stow

Appeals Court of Massachusetts, Middlesex - September 15, 2015 - N.E.3d - 2015 WL 5330370

Neighbor appealed issuance of comprehensive permit for construction of a low and moderate income elderly housing project. The Superior Court affirmed. Neighbor appealed.

The Appeals Court held that:

- Neighbor had standing to challenge the permit, and
- Waiver of the bylaw provision limiting the flow into waste disposal systems was unreasonable.

Neighbor, who presented expert testimony that well for proposed low and moderate income elderly housing project would have elevated nitrogen levels, had standing under “anti-snob zoning act” to challenge issuance of comprehensive permit for the project, even though the judge ultimately rejected the evidence, where judge’s ultimate finding that the nitrogen would not reach the neighbor’s well went to neighbor’s success on the merits, and not his ability to challenge the acts of the zoning board of appeals.

Abutters have the benefit of a presumption of aggrievement, as would allow them to appeal waiver of local requirements and regulations pursuant to “anti-snob zoning act” regarding an affordable housing development, but if challenged by evidence warranting a contrary finding, the plaintiff must prove standing by introducing credible evidence of an injury special and different from the concerns of the rest of the community.

Waiver by zoning board of appeals of the bylaw provision limiting the flow into waste disposal systems within town’s water resource protection district was unreasonable for proposed low and moderate income elderly housing project, and thus issuance of comprehensive permit for project was unwarranted, even though there was a local need for additional affordable housing, where it was more likely than not that the project would cause excessive nitrogen levels at neighboring well, and it was unreasonable to conclude that the local need for affordable housing outweighed neighbor’s health concerns.