

Bond Case Briefs

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Eisai, Inc. v. Housing Appeals Committee

Appeals Court of Massachusetts, Suffolk - June 20, 2016 - 89 Mass.App.Ct. 604 - 52 N.E.3d 1097

Owners and lessors of abutting property sought judicial review of a decision of Housing Appeals Committee (HAC) that directed town zoning board of appeals to issue comprehensive permit to developer of housing project in industrial area.

The Superior Court Department affirmed. Owners and lessors appealed.

The Appeals Court held that:

- No evidence was presented that controverted owners and lessors' presumption of standing;
- Developer established prima facie case before HAC;
- HAC was within its statutory and regulatory authority to apply four-part test; and
- HAC's decision was supported by substantial evidence.

No evidence was presented that controverted presumption of standing for owners and lessors of property abutting proposed development, and therefore owners and lessors were entitled to rely entirely on their presumed status of being aggrieved parties to establish standing to appeal Housing Appeals Committee's (HAC) decision that directed town zoning board of appeals to issue comprehensive permit to developer.

Developer that had its comprehensive permit application denied by town zoning board established prima facie case before Housing Appeals Committee (HAC), despite contentions that developer's expert was unfamiliar with town's planning history and that other evidence before HAC contradicted much of testimony from developer's witnesses. HAC credited extensive testimony of developer's expert, whom it characterized as experienced municipal planner, together with testimony of manager of proposed project, an experienced real estate development specialist.

Four-part test to determine whether there was local concern of sufficient weight to outweigh regional need for affordable housing, enunciated by Housing Appeals Committee (HAC) on review of town zoning board of appeals' decision to deny developer comprehensive permit, was entirely consistent with HAC's prior policies and was well within its statutory and regulatory authority, despite contention that HAC "moved the goalposts" from previous two-part test. "New" factors were simply more detailed explication of two factors previously described.

Housing Appeals Committee's (HAC) decision to require town to issue comprehensive permit to developer of housing project in industrial area was supported by substantial evidence, and was not arbitrary, capricious, or otherwise contrary to the law. HAC balanced what it found to be relatively weak interests asserted by local zoning board, including job creation possibly lost by converting commercial lot into housing, conflicts of uses, and loss of tax revenue, against town's failure to adequately encourage affordable housing and its failure to meet statutory minimum 10% affordable housing obligation.

