

Bond Case Briefs

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ZONING & LAND USE - MASSACHUSETTS

135 Wells Avenue, LLC v. Housing Appeals Committee

**Supreme Judicial Court of Massachusetts, Suffolk. - November 13, 2017 - N.E.3d - 478
Mass. 346 - 2017 WL 5247488**

Landowner, a limited-liability company (LLC) that desired to construct a residential complex on its land, which was subject to deed restrictions held by the city, sought judicial review of the Department of Housing and Community Development's housing appeals committee's (HAC) affirmance of city's zoning board of appeals denial of landowner's permit application.

The Land Court Department entered judgment on the pleadings to HAC, zoning board of appeals, and city. Landowner appealed and sought direct appellate review.

The Supreme Judicial Court of Massachusetts held that:

- Local zoning board of appeals did not have the power to alter land's deed restrictions, and
- Neighborhood's nature had not changed so much as to invalidate the deed restrictions.

Power of local zoning board of appeals under the statute governing approval of comprehensive permits for low and moderate income housing projects to issue "permits or approvals" and to dispense with "requirement or regulations" did not include the power to alter land parcel's deed restrictions, also properly termed a "negative easement" or "restrictive covenant," that were held by city and that prevented parcel's owner from constructing its desired residential complex, which would have had 25% of its units reserved for affordable housing; deed restrictions were a property interest that could not abrogated by any act of a zoning board.

Neighborhood's nature had not changed so much as to invalidate land parcel's deed restrictions, also properly termed a "negative easement" or "restrictive covenant," that were held by city and that prevented parcel's owner from constructing its desired residential complex, even though the covenant's precise purpose was to support a light-manufacturing district, the property did not support any manufacturing uses, and the property apparently never supported any manufacturing uses; although the covenant restricted all residential use of the land, it maintained an active economic district, protected certain areas as open space, and maintained buffer zones that protected the nearby river from encroaching development.