

Bond Case Briefs

Municipal Finance Law Since 1971

ZONING & PLANNING - NEW HAMPSHIRE

Appeal of Town of Amherst

Supreme Court of New Hampshire - January 18, 2023 - A.3d - 2023 WL 224671

Town appealed from orders of the housing appeals board (HAB) vacating the denial by town's planning board of applicants' subdivision and site plan approval plan for condominium project containing both age-restricted and unrestricted units.

The Supreme Court held that:

- HAB reasonably determined that town planning board's articulated ground of "age" as basis for denial of subdivision/site plan application was itself unreasonable, and
- HAB reasonably determined that board's articulated ground of "rural aesthetic" as basis for denial of subdivision/site plan application was itself unreasonable.

Housing appeals board (HAB) reasonably determined that town planning board's articulated ground of "age" as basis for denial of subdivision/site plan application for condominium project containing both age-restricted and unrestricted units was itself unreasonable; applicants had previously been granted conditional use permit (CUP) for project that included "elderly" component, compliance with applicable federal and state statutes could be addressed by condominium documents, town counsel's review and approval of proposed condominium documents was customary practice and ordinarily condition of site/subdivision approval, and board's failure to follow this customary practice and, instead, to deny application based on its own concerns about legal compliance was unreasonable.

Housing appeals board (HAB) reasonably determined that town planning board's articulated ground of "rural aesthetic" as basis for denial of subdivision/site plan application for condominium project containing both age-restricted and unrestricted units was itself unreasonable; applicants had previously been granted conditional use permit (CUP) for project, and it was unreasonable to deny project based on non-compliance with "rural aesthetic" because the applicable factors related to rural character or aesthetic were already considered in granting the CUP, and in denying the application, board did not focus on the elements of rural character, but, rather, focused on density.