

Recent Developments in Massachusetts Case Law



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Phil Lapatin, a partner in the Boston office of the international law firm of Holland & Knight, LLP, has been REBA's case law commentator since 1978.

Phil's practice focuses primarily on commercial leasing, as well as the purchase and sale of investment property. He has been

involved in various cases of importance to the real estate industry, including suits in which rent control ordinances were invalidated and condominium documents were exempted from the statutory provisions governing restrictions on the use of land. He also led a lawsuit preventing the City of Boston from imposing a special tax on the owners of downtown office buildings in order to fund fire department costs.

Phil is the author of *The Standard Forms Guide*, *The Real Estate Legal Desk Book* and *The Massachusetts Landlord Survival Guide*, all published by the Greater Boston Real Estate Board.

A native of Rhode Island, Phil attended Cornell University and Boston University School of Law, where he served as Editor of the *Boston University Law Review*. In 2008, REBA awarded Phil its highest honor, the Richard B. Johnson Award, for lifetime achievement.

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Note: “LC” citations refer to Land Court opinions which can be obtained from Massachusetts Lawyers Weekly (“MLW”) by using the designated identification number. Please do not request these cases from the Land Court clerks. Where “SD” is included as part of a Land Court citation, only a Summary Decision was issued pursuant to Rule 14 without any detailed legal analysis. MLW reference codes have been included as well in the case of federal decisions which have not yet appeared in the permanent digest. “UP” citations refer to unpublished Appeals Court opinions also available through MLW; these cases are not binding precedent and can be cited only for whatever persuasive value they may have.

ADVERSE POSSESSION

Driggers v. Rizkallah, Mass. App. Ct. UP: Neither adverse possession nor prescriptive easement established where use of portion of neighbor’s property was neither continuous nor notorious

Geiger v. Needham Miller, LLC, Mass. App. Ct. UP: Summary judgment inappropriate where lawn maintenance may be sufficient to support adverse possession claim unless owner also cared for disputed area

Jonak v. Brady, LC 46: Expansion of driveway sufficient to establish adverse possession while prescriptive easement has been acquired to maintain flagpole and birdfeeder, but blowing of leaves and other yard waste onto larger wooded area does not support adverse possession claim

King v. Claire Adams, LLC, Mass. App. Ct. UP: Occasional use of parking area by customers of ice cream shop insufficient to prescriptively extinguish exclusive nature of easement in favor of grocer

Lord v. Orange, LC 37: Although county road discontinued by implication following establishment of superior, parallel road, claimant subsequently acquired prescriptive easement to travel across and install utility poles along portion of discontinued road

Morose v. Fitch, LC 67: Adverse possession established with respect to area which was enclosed by fence and used as extension of claimant’s back yard but not with respect to additional areas where claimant planted roses and bushes not clearly demarcated from adjoining wild growth and trimmed trees and brush with permission of owner; additionally, claimant has prescriptive easement to share use of lawn area adjoining garage but not to travel over pathway whose location cannot be verified

Ramos v. Meade, LC 51: Registry properly rejected document asserting adverse possession of registered land

Reposa v. Ferreira, LC 44: Use of disputed area as part of yard, including cultivation, lawn maintenance and construction of carport and other improvements, sufficient to establish adverse possession; claimant’s alleged promise to remove encroachments unenforceable absent proof of fraudulent intent or reliance by record owner

Silverio v. North Andover, LC 24: Summary judgment inappropriate where court must determine whether adverse possession was established prior to enactment of statutory amendment barring claims with respect to property held by town or school committee for public purpose

Thornton v. Driscoll, LC 71: While mortgage does not include portion of residential property already lost through adverse possession, remainder of parcel was validly encumbered by mortgage subject to right of neighbor to subsequently adversely acquire additional portion of land subject to mortgage

Vasquez v. Cambridge Housing Authority, LC 62: Where land comprising portion of site leased by Authority to private developer for affordable housing project is held for public purpose and thus exempt from adverse possession pursuant to G.L. c. 260, §31, encroaching shed, planter bed and fence must be removed

BROKERAGE

Huang v. RE/MAX Leading Edge, 101 Mass. App. Ct. 150: Broker may proceed with damage claim resulting from client's breach of oral agreement granting broker exclusive right for one year to find home in exchange for broker's reasonable efforts but client was entitled to terminate oral agreement granting broker exclusive right to sell current home where agreement had no specified duration and imposed no obligations on broker

CONDOMINIUMS

Catule v. Barreau, LC 73: Pursuant to provisions of master deed, unit owners have exclusive right to use certain outdoor areas but must share driveway

Connolly v. Moore, Mass. App. Ct. UP: Where ordinary function of preliminary injunction is to maintain status quo until trial, judge erred by requiring condominium association to obtain municipal approval of exterior gate installed by unit owner

Liu v. Mystery, LLC, LC 31: Subject to Statute of Limitations, condominium unit owner entitled to pursue unjust enrichment claim based on payment of real estate taxes allocable to area which was physically added to adjoining unit by improperly placed demising wall

Stahl v. 12-14 Marcella Street Condominium Trust, LC 50: Condominium trustees obligated to ensure that location of unit owners' parking space conforms to recorded site plan

EASEMENTS

Alexander v. Kluever, LC 45: De minimis 4.8-inch encroachment of fence outside prescribed building area does not constitute actionable violation of easement designed to preserve view of pond

Cardoso v. AY Enterprises, LLC, LC 23: Easement generally allowing travel across lot may be utilized without regard to ultimate destination of easement holder

Genova v. Cornell, Mass. App. Ct. UP: Blocking path of easement with trailer, boat and canoe constitutes trespass

Keaveney v. Ayers, LC 30: Preliminary injunction appropriate to bar interference with easement allowing subdivision lot owners to make use of dock and pathway

Lindenbaum v. Perez, Mass. App. Ct. UP: Easement allows only pedestrian travel and may not be overloaded so as to service additional property acquired by holder

Moriarty v. Resor, LC 35: In accordance with intent of parties, conveyance of lot included implied easement to use roadway so as to facilitate future construction of house

Spatz v. Preece, LC 60: Defendants may be held in contempt for clear and undoubted disobedience of preliminary injunction prohibiting interference with right of way

LAND USE

Armstrong v. Secretary of Energy and Environmental Affairs, 490 Mass. 243: Department of Environmental Protection improperly delegated to Secretary its authority under G.L. c. 91 to approve construction on filled tidelands

Strayton v. Martha's Vineyard Commission, Mass. App. Ct. UP: Absent evidence of alleged harm potentially resulting from emissions or obstruction of view, plaintiffs lack standing to challenge Commission's approval of telecommunications tower

LEASES

APT Management Inc. v. Newcomb, Mass. App. Ct. UP: Notice to quit based on tenant's failure to keep apartment in good, sanitary condition was not vitiated by subsequent notice seeking removal of tenant for illegal activity pursuant to G.L. c. 139, §19

Cimini v. Nicola, Mass. App. Ct. UP: Landlord violated covenant of quiet enjoyment and impinged on tenant's right to privacy by posting oversized copy of termination notice on front door of rented house

EMG Realty, LLC v. Read, Mass. App. Ct. UP: Provisions of G.L. c. 239, §8A regulating counterclaims in eviction action do not apply after case transferred to civil docket

James v. Familia, Mass. App. Ct. UP: Where landlord seeks eviction based on nonpayment of rent, tenant entitled under G.L. c. 239, §8A to pursue counterclaims resulting in award of damages for breach of warranty of habitability, improper utility charges and violation of security deposit statute

Kahyaoglu v. Sillari, Mass. App. Ct. UP: Tenant lacks standing to challenge conveyance of apartment building by landlord who had allegedly promised to bequeath property to tenant in his will

Lawrence v. Lei, Mass. App. Ct. UP: Sale of dilapidated property by receiver was not unconstitutional taking

Linardon v. WoodSpring Suites Boston MA Saugus, LLC, 490 Mass. 1006: Judge properly lifted stay of execution following denial of tenant's appeal

LSE Corona Borealis LLC v. Fairgrounds Realty LLC, Mass. App. Ct. UP: Pursuant to provisions of lease, tenant not responsible for real estate tax increase unless allocable to construction and operation of its solar-powered electric generating facility

McNeff v. Cerretani, 489 Mass. 1024: Where deadline not prescribed by statute, judge may extend his own time limit for posting of eviction appeal bond

Rangel v. Mohamed, Mass. App. Ct. UP: Residential eviction not presumed retaliatory under G.L. c. 239, §2A where tenant's complaint to police alleging criminal assault by landlord's employee occurred more than six months prior to initiation of eviction

S&B Property Management v. Miranda, Mass. App. Ct. UP: Eviction barred under G.L. c. 239, §2A where landlord has failed to rebut presumption that tenancy was terminated on account of tenant's complaint regarding infestation but rent was improperly withheld under G.L. c. 239, §8A where landlord was not aware of problem before tenant failed to make payment

Shattuck v. Donovan, Mass. App. Ct. UP: Following early termination of agreement, housemate entitled to return of advance rental payment

Slater v. Traynor Management, Inc., 101 Mass. App. Ct. 705: Landlord's failure to return security deposit within 30-day period prescribed by G.L. c. 186, §15B not excused by offer to let tenant retrieve check at management office, particularly where landlord knew that tenant had left state

Slavin v. Lewis, Mass. App. Ct. UP: Judge did not abuse discretion in refusing to grant injunction compelling surrender of house by owner's former girlfriend in lieu of summary process eviction proceeding

Stikeleather v. Lowe, Mass. App. Ct. UP: Tenant breached provisions of commercial lease by removing ceiling beams in order to facilitate use of forklifts

MORTGAGES

21st Mortgage Corporation v. DeMustchine, 100 Mass. App. Ct. 792: Notwithstanding bank's failure to include girlfriend as co-defendant in summary process action, borrower who failed to pay required use and occupancy charges may not pursue appeal of post-foreclosure eviction order

Catarius v. Carton, Mass. App. Ct. UP: Absent knowledge that son was executor of deceased borrower's estate, mortgage servicer not liable for entering into loan modification agreement with daughter

Glaser v. MTGLQ Investors, L.P., Mass. App. Ct. UP: Borrower may proceed with claim that mortgage of property which he owned jointly with wife was invalid where signed only by wife as his attorney in fact

HSBC Bank USA, N.A. v. Morris, 490 Mass. 322: Mortgage assignee seeking eviction following foreclosure is subject to counterclaim whereby borrower attempts to reduce or extinguish liability for repayment based on alleged violation of Predatory Home Loan Practices Act (G.L. c. 183C, §15(b)(2))

Shea v. Bank of New York Mellon, Mass. App. Ct. UP: Loan not subject to provisions of G.L. c. 244, §35B requiring lender to take reasonable steps and make good faith efforts to avoid foreclosure of certain residential mortgages

TJR Services, LLC v. Hutchinson, LC 19: Summary judgment inappropriate where court must determine whether party conducting foreclosure sale was successor trustee of mortgage holder

U.S. Bank National Association v. Arsenault, Mass. App. Ct. UP: Housing Court may simultaneously consider challenge to validity of foreclosure and complaint seeking eviction of borrower

U.S. Bank National Association v. Menard, Mass. App. Ct. UP: Mortgage may not be reformed to add holder of life estate who was unaware of loan and received no benefit from proceeds

U.S. Bank National Association v. Mistovich, Mass. App. Ct. UP: Bank entitled to recover appeal bond following borrower's unsuccessful challenge of post-foreclosure eviction order

PURCHASE CONTRACTS

El Nar v. Salis, Mass. App. Ct. UP: Complaint improperly dismissed where court must determine whether accepted offer constituted binding contract for purchase and sale of condominium unit

Fariello v. Zhao, 101 Mass. App. Ct. 566: Lis pendens properly dissolved where buyer, following acceptance of offer, failed to submit a form of purchase contract he was prepared to sign and did not object to certain provisions of seller's draft until after deadline for execution

Menayrji v. Aniello, LC 78: Where recorded trust requires all trustees to approve any action but also provides that documents executed by single trustee are conclusive evidence of trustee's authority, buyers may enforce purchase contract only if they lacked actual knowledge that one trustee objected to sale

New England Preservation and Development, LLC v. Fairhaven, Mass. App. Ct. UP: Judge improperly dissolved lis pendens where buyer's allegation that seller improperly terminated purchase contract is not frivolous

O'Brien v. DC Properties, LLC, LC 25: Seller bound to proceed with sale of commercial property pursuant to provisions of accepted offer, including giving buyer an opportunity to complete its due diligence investigation and terminate contract if tenant fails to vacate rear portion of building

RCS Learning Center, Inc. v. Pratt, LC 33: Purchase contract deemed to have been abandoned where neither party tendered performance or alleged a breach after buyer was unable to fund acquisition of property

Ritter v. Johnson, _ F.Supp. 3d _ (MLW 02-205-22): Seller must comply with provisions of accepted offer purporting to be binding contract where all material terms related to proposed house purchase were agreed upon

Stonegate Group Management, LLC v. Tucard, LLC, Mass. App. Ct. UP: Although lis pendens erroneously allowed where commercial tenants not named as defendants, plaintiff may proceed with claim that seller wrongfully refused to sign purchase contract and convey property after completion of negotiations

SUBDIVISIONS

Colchester Properties, LLC v. Methuen Community Development Board, LC 77: Board improperly withheld approval of proposed subdivision and refused to waive subdivision rules based on incorrect determination that project would violate provisions of local zoning code

Jackson Woods Investments, LLC v. Holden Planning Board, Mass. App. Ct. UP: Having failed to challenge condition of subdivision approval requiring funding of third party inspector to oversee installation of infrastructure, developer may not subsequently seek to modify plan by reducing inspection costs

Tessier v. Frattaroli, LC 40: G.L. c. 40A, §16 bars issuance of building permit within two years after prior permit was annulled absent finding of specific and material changes in conditions; subdivision exemption requires finding that lots have frontage on private way adequate to accommodate traffic

TAXES AND TAX TAKINGS

Bourne v. Coffey, 101 Mass. App. Ct. 496: Petition to vacate tax taking foreclosure properly denied where, despite alleged illness and financial difficulties, taxpayer could have participated in proceedings but chose not to do so

Oxford v. Smith, Mass. App. Ct. UP: Owner who had actual notice of town's petition to foreclose right of redemption following tax taking was properly defaulted after failing to appear at hearing

TITLE

Amaral v. Gloucester, Mass. App. Ct. UP: Pursuant to Article 97 of Amendments to state constitution protecting land taken or acquired for conservation purposes, legislature properly authorized use of existing softball field for construction of new school

Balicki v. Ziegler, LC 53: Boundary line between adjoining lots determined by reference to existing stone monument

Battle v. Howard, 489 Mass. 480: Neither interim court order authorizing partition nor acceptance of purchase offer terminated joint tenancy so as to vitiate right of survivorship following death of co-owner

Commonwealth v. Comley, LC 59: Having failed to establish superior title, defendants enjoined from trespassing upon wildlife management area and blocking passage along roadway

DeVico v. Sullivan, Mass. App. Ct. UP: Brothers may proceed with claim that sister who had promised to hold parents' property in trust for benefit of children improperly named herself as sole beneficiary

DiCienzo v. Pizziferri, LC 20: Property invalidly conveyed by trustee who was subject to guardianship

Emami-Tabrizi v. Emami, LC 72: Where grantor acquired condominium unit in his own name as residence for his brother, subsequent, unrecorded deeds conveying title to brother and his wife were ineffective to transfer title where parties intended only to show condominium association that brother and wife were lawfully residing in unit

Gobbi v. Dedham, LC 26: Claims against town related to drainage system barred where notice not properly given under Tort Claims Act (G.L. c. 258)

Great River Hydro, LLC v. Mayhew Steel Products, Inc., LC 29: Owner of hydroelectric-generation facility validly agreed to provide free electricity forever in exchange for water rights

Gulino v. Michaud, LC 70: Partition action may be pursued by holder of undivided share in property distributed after termination of trust

Hanlon v. Flores Brothers Realty, LLC, LC 55: Deed may not be reformed to eliminate portion of lot which seller did not intend to convey where buyer has granted mortgage to lender unaware of discrepancy

Johnson v. Christ Apostle Church, Mt. Bethel, LC 49: Construction of fence on defendants property but in close proximity to property line and plaintiff's home does not constitute nuisance where height does not exceed six-foot threshold established by G.L. c. 49, §21 and plaintiff remains entitled to access defendant's property pursuant to G.L. c. 266, §120B in order to facilitate repair and maintenance of plaintiff's home

Long v. Commonwealth, LC 43: 1870 deed was intended by parties to exclude strip subsequently acquired by railroad

In re Luu, 71 Bankr. Ct. Dec. 722: Homestead declaration invalid where not signed or acknowledged under penalty of perjury

Morth v. Morth, Mass. App. Ct. UP: Interim order appointing commissioner to investigate proposed partition is not appealable

OverCreek LLC v. LeClaire, Mass. App. Ct. UP: Based on contemporaneous discussions between the parties, deed construed to prevent all structures on encumbered lot

Slesar v. Goldman, Mass. App. Ct. UP: Replacement cost damages properly assessed for wrongful cutting of trees

Smith v. Silva, Mass. App. Ct. UP: Owner not prohibited from cutting tree limbs and roots within portion of his land where neighbor has access easement to facilitate maintenance and upkeep of her own trees

Sor v. Lim, LC 22: Deed requiring grantee to pay purchase price within 24 months did not create fee simple determinable so as to entitle grantor to recover property if payments not made

Sousa v. Brownell, LC 74: Pursuant to provisions of 1843 deed, boundary between adjoining properties is Swansea-Somerset town line

ZONING

Exemptions

Hume Lake Christian Camps, Inc. v. Monterey Planning Board, LC 28: Religious exemption under G.L. c. 40A, §3 protects use of area for parking of recreational motor vehicles by persons attending religious camp but not for housing volunteer workers or seasonal staff

Macdonald v. Mashpee Zoning Board of Appeals, LC 54: Provisions of G.L. c. 40A, §6 allowing construction of house on undersized lot does not apply where owner also hold title to adjoining trailer park

Tracer Lane II Realty, LLC v. Waltham, 489 Mass. 775: Where unreasonable regulation of solar energy facilities is prohibited by G.L. c. 40A, §3, city may not bar access road servicing such a facility from residential zoning districts

Williams v. Norwell Board of Appeals, 490 Mass.684: Where, prior to adoption of local code amendment rendering lot unbuildable, lot had more than 50 feet of frontage, defined by code to include frontage on private way, house may be constructed on lot pursuant to G.L. c. 40A, §6

Nonconforming Uses

Berger v. Briarstone Partners, L.L.P., LC 65: Where concerns regarding view not recognized by local zoning code and alleged harms related to groundwater contamination and increased density are unfounded, abutter lacks standing to challenge appeals board decision allowing enlargement of nonconforming house after fire damage

Bignami v. Brookline Zoning Board of Appeals, LC 18: Provisions of G.L. c. 40A, §7 conferring lawful nonconforming use status on illegal alterations in place and unchallenged for ten years applies to alteration of lot line rendering existing house unlawful on account of insufficient frontage

Doyle v. Charlton Zoning Board of Appeals, Mass. App. Ct. UP: Blasting activities constitute permissible extension of lawful nonconforming use of property for mining

Granby Bow & Gun Club, Inc. v. Granby, LC 32: Clearing of land to facilitate additional long-range target shooting did not impermissibly expand nonconforming use of archery, pistol and rifle club

Kende v. Edgartown Zoning Board of Appeals, LC 57: Where concerns regarding noise, traffic, congestion, privacy and view unsubstantiated or not recognized by local zoning code, abutters lack standing to challenge permit allowing addition of apartment and swimming pool to nonconforming house on undersized lot so as to allow occupancy by owner's daughter and her family

Maldonado v. Lynn Zoning Board of Appeals, LC 34: When nonconforming lot size and frontage not modified and both current and proposed uses are allowed under local zoning code, single-family house may be converted to two-family house

Mandell v. Wellfleet Zoning Board of Appeals, LC 39: Local zoning code construed to allow granting of special permit for reconstruction and enlargement of nonconforming cottage following destruction by fire

Noll v. Abington Zoning Board of Appeals, LC 76: Board may not allow use of nonconforming two-family dwelling to be changed pursuant to G.L. c. 40A, §6 by adding another unit where only single-family dwellings are allowed in district

Special Permits and Variances

Agami v. Boston, LC 21: Summary judgment inappropriate where court must decide whether abutters unreasonably delayed in challenging project because they were not notified of hearings which resulted in granting of variance under Boston zoning code

Bask, Inc. v. Taunton Municipal Council, 490 Mass. 312: Although judge had no jurisdiction to enjoin consideration of competing applications, he properly ruled that special permit for retail marijuana dispensary was improperly denied where concerns regarding traffic were unsupported, unreasonable and pretextual

Benevolent Botanicals LLC v. Malden, LC 68: Proposed lessee has standing to contest denial of variance to operate retail marijuana store within prohibited residential buffer area but location of property within such area does not constitute topographical hardship; lessee may proceed with claim that provisions of local zoning code are unreasonably impractical in violation of state statute (G.L. c. 94G) regulating marijuana sales

BoylstonD3 LLC v. Brookline Zoning Board of Appeals, LC 69: Pursuant to G.L. c. 231, §6F, party who, with representation of counsel, falsely claimed ownership interest in abutting parcel in order to challenge special permit for construction of townhouse community required to reimburse legal fees and other costs incurred by developer

Buckingham v. Wareham Planning Board, LC 17: Prescriptive easement insufficient to confer standing on plaintiff seeking to challenge special permit allowing construction of solar energy facility and pursue speculative claim that project will violate local earth removal by-law

Decklebaum v. Provincetown Zoning Board of Appeals, LC 75: Variance properly granted for reconstruction of nonconforming deck destroyed by plaintiff-abutter's contractor where disabled patrons would otherwise be unable to access restaurant

Empire Acquisition Group, LLC v. Seekonk Zoning Board of Appeals, LC 42: Board lacks authority to grant variance allowing construction of driveway on unbuilt, heavily-wooded private way

Epstein v. Falmouth Zoning Board of Appeals, Mass. App. Ct. UP: Speculative concerns regarding density and view insufficient to confer standing on abutter seeking to challenge special permit authorizing construction of condominium

Epstein v. Marblehead Planning Board, Mass. App. Ct. UP: Special permit allowing proposed redevelopment of oceanfront property properly granted under provisions of local zoning code

Galbi v. Cellco Partnership, 101 Mass. App. Ct. 260: Judge properly refused to allow additional abutter to intervene in action challenging issuance of variance long after expiration of appeal period

Grissom Park Co., LLP v. Pembroke Planning Board, LC 47: Special permit and site plan approval properly granted pursuant to local zoning code for storage of dumpsters on commercial property

Guinee v. Lawrence Zoning Board of Appeals, LC 38: Congestion concern confers standing on abutter seeking to challenge variance, which was unlawfully granted absent showing of hardship which would result from not being allowed to subdivide parcel and construct additional residences

Johanning v. Milton Planning Board, LC 61: Res judicata bars challenge to renewal of special permit which was previously subject of unsuccessful appeal by plaintiffs

Markham v. Pittsfield Cellular Telephone Company, 101 Mass. App. Ct. 82: Abutter who allegedly failed to receive notice of special permit hearing may not appeal decision following expiration of 90-day period prescribed by G.L. c.40A, §17 for asserting procedural defects

Nova Farms, LLC v. Attleboro Zoning Board of Appeals, LC 27: Special permit for retail sale of marijuana properly denied under local zoning code on account of concerns regarding undue traffic congestion

Rodrigues v. Brockton Zoning Board, LC 48: Summary judgment inappropriate where grantee of variance allowing operation of seafood distribution business in residential neighborhood must rebut presumption (which need not be verified by expert testimony in the first instance) that traffic concerns sufficient to confer standing on abutter-to-abutter wishing to challenge decision

Scott v. Lakeville Planning Board, LC 56: Concerns regarding noise confer standing on abutters seeking to challenge special permit and site plan approval, which were improperly granted pursuant to local zoning code amendment which authorized warehouse within Development Opportunities Overlay District not demarcated on official map

Spencer Solar Farm, LLC v. Spencer Zoning Board of Appeals, LC 36: Special permit allowing use of property as solar energy facility did not lapse pursuant to local zoning code where, within two years of issuance, developer took action to fulfill condition imposed by decision, namely application for site plan approval, which did lapse when developer took no action to fulfill conditions of decision within two years thereafter; Land Court lacks jurisdiction to entertain claim related to municipal by-law requiring stormwater permit

Strayton v. Martha's Vineyard Commission, Mass. App. Ct. UP: Unsubstantiated concerns regarding health and visual impact insufficient to confer standing on plaintiffs seeking to challenge special permit authorizing proposed telecommunications tower

Wang v. Lexington Planning Board, Mass. App. Ct. UP: Summary judgment inappropriate where special permit allowing construction of residential development may have violated Board's regulations by not providing for easement allowing access from new roadway to abutting property

Miscellaneous

Andrews v. Halifax Zoning Board of Appeals, LC 66: Multifamily development complex improperly approved where each building not located on individual legal lot as required by local zoning code

Bartlett v. Nantucket, LC 63: Local zoning code provision allowing hot tubs impliedly imposes limit of 1,000 gallons of water where larger capacity would meet definition of prohibited swimming pool

Bellingham Massachusetts Self Storage, LLC v. Bellingham, Mass. App. Ct. UP: Zoning code amendment invalid where not initiated by town officials or other persons enumerated in G.L. c. 40A, §5

Cogliano v. Norton Planning Board, Mass. App. Ct. UP: Local zoning code amendment facilitating solar energy installation on cranberry bogs properly adopted where (1) error in notice identifying hearing date but describing hearing as occurring on a Wednesday rather than a Tuesday was not misleading for purposes of G.L. c. 40A, §5 and (2) pursuant to local bylaws, notice was properly published in newspaper without being mailed to specific property owners given that amendment applied to any parcel within town where bog already existed or might be created in the future

Dery v. Boxford Zoning Board of Appeals, LC 52: Construction of model locomotives in separate building on house lot as hobby constitutes permitted accessory use under local zoning code

Gabriel v. West Boylston Zoning Board of Appeals, LC 41: Large garage for storage of commercial vehicles does not constitute permissible accessory residential use under local zoning code

Gallagher v. Nahant Zoning Board of Appeals, Mass. App. Ct. UP: Abutter who did not timely appeal building inspector's decision generally determining that landscaping component of new house conformed to local zoning code may nevertheless challenge substantial additional work not shown on site plan accompanying original building permit application

Immanuel Corp. v. Uxbridge Zoning Board of Appeals, Mass. App. Ct. UP: Local zoning code bars importation of soil by gravel quarry operator

Milton Zoning Board of Appeals v. HD/MW Randolph Avenue, LLC, 490 Mass. 257: Committee properly modified comprehensive permit by eliminating conditions imposed by local appeals board which rendered affordable housing project significantly more uneconomic than originally proposed

Northborough v. Anza, Mass. App. Ct. UP: Farmer properly held in contempt for disobedience of court order enforcing local zoning code by barring storage of food waste products in excess of amount needed to feed livestock

Pepperell Board of Selectmen v. Pepperell Zoning Board of Appeals, LC 58: Filling of pit with unwanted soils reclaimed from other sites constitutes commercial dumping ground barred by local zoning code provision enforcement of which is not barred by state law regulating soil reclamation projects

Pincroft Development, Inc. v. West Boylston Zoning Board of Appeals, 101 Mass. App. Ct. 122: Board unreasonably construed local zoning code to prohibit construction of apartment building on lot straddling two districts where portion of lot located in more restricted district would be used only to satisfy open space requirements

Sweeney v. Pace, LC 64: Approval of proposed hotel pursuant to Article 80 of Boston zoning code may not be challenged by abutter, who must await issuance of building permit or decision by board of appeal

Winchester House Condominium Trust v. Brookline Zoning Board of Appeals, Mass. App. Ct. UP: Concerns regarding shadows, noise and tree removal insufficient to confer standing on abutters seeking to invalidate comprehensive permit