DOCKET SUMMARY

***Stone et al. v. Cable Matters, Inc. et al.* (Massachusetts Supreme Judicial Court)**

The issue in this case, which is before the Supreme Judicial Court on further appellate review, is whether a lower court of the Commonwealth can, consistent with the Zoning Act and the Court's applicable precedent, require a defendant property developer to go *beyond* its proposed land use and show that an abutter would not be harmed by any *potential* future change in its land use, in order to defeat the presumption that the abutter has standing to sue as a "person aggrieved" under G. L. c. 40A, § 17.[1] Here, the town of Northborough's Zoning Board of Appeals (ZBA) granted the defendant, Cable Matters, Inc., a variance for its proposed land use, i.e., the construction of a warehouse and office space that will generate relatively light street traffic.[2] The plaintiffs, who are abutters to Cable Matters' property, challenged the grant of the variance in Superior Court, under § 17 of the Act.

The trial court dismissed the suit, holding that the plaintiffs lacked standing to sue because they were not "person[s] aggrieved" by the ZBA's decision approving Cable Matters' proposed land use. In a meticulous and thoroughly reasoned opinion, the Superior Court applied the Court's familiar burden-shifting scheme under § 17,[3] and concluded that Cable Matters amply defeated the presumption that the abutters were aggrieved by the proposed land use, and that the abutters failed to carry their ultimate burden of proving aggrievement.

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[1] Section 17 of the Act provides, in relevant part, that "*[a]ny person aggrieved* by a decision of the [zoning] board of appeals or any special permit granting authority . . . may appeal to . . . the superior court department." G. L. c. 40A, § 17 (emphasis added).

[2] While Cable Matters' property is located in an industrial zoned district, the property is also in a groundwater protection overlay district, in which a warehouse and office space are neither allowed nor prohibited.

[3] Specifically,

> A plaintiff who is an abutter to the property in question enjoys a presumption that he or she is a "person aggrieved." . . . The defendant, however, can rebut the presumption [1] by showing that, as a matter of law, the claims of aggrievement raised by an abutter . . . are not interests that the Zoning Act is intended to protect. . . . Alternatively, the defendant can rebut the presumption [2] by coming forward with credible affirmative evidence that refutes the presumption . . . , or [3] by showing that the plaintiff has no reasonable expectation of proving a cognizable harm. . . . Once the presumption is rebutted, the plaintiff must prove standing by putting forth credible evidence to substantiate the allegations. . . . The plaintiff must establish--by direct facts and not by speculative personal opinion--that his injury is special and different from the concerns of the rest of the community[.]

Picard v. Zoning Bd. of Appeals of Westminster, 474 Mass. 570, 573-74 (2016) (cleaned up).

The Appeals Court, however, vacated and remanded, based on an unprecedented and untenable interpretation of § 17. The court concluded that, to defeat the presumption of aggrievement, it was not enough for Cable Matters to show that the plaintiffs would not suffer any cognizable harm from the town's approval of Cable Matters' proposed land use. According to the Appeals Court, Cable Matters must also go *beyond* the detailed factual record of its intended land use and "show," based on pure speculation, that the plaintiffs would not suffer any actionable future harm from what the Appeals Court nebulously called "ordinary warehouse usage":

> *We conclude that the judge erred in considering only Cable Matters's proposed use* of the warehouse when determining that Cable Matters had rebutted the presumption that the plaintiffs were aggrieved. . . . In its motion for summary judgment, *Cable Matters did not submit sufficient evidence about ordinary warehouse usage*, and what impact that would have on the plaintiffs, to rebut the presumption that the plaintiffs were "aggrieved."

Stone v. Zoning Bd. of Appeals of Northborough, 104 Mass. App. Ct. 1123 (2024), 2024 WL 4281397, at *4.

In essence, the Appeals Court required Cable Matters to engage in *two* levels of pure speculation before it could defeat the presumption that the abutters were "person[s] aggrieved." First, Cable Matters must conjecture whether and, if so, how its land use might exceed its current, approved plans, at any time in the indefinite future. Cable Matters must then guess "what impact that [potential change in land use] would have on the plaintiffs, to rebut the presumption that the plaintiffs were 'aggrieved.'" *Id*.

The Appeals Court's reading of § 17 of the Act would require the trial court and the property developer alike to engage in a purely speculative and *counterfactual* inquiry concerning the developer's potential future change in its land use, and any potential effects on the abutter. This approach contravenes the Act and defies common sense. Section 17 expressly requires the abutter to "sufficiently allege and . . . plausibly demonstrate that *measurable injury*, which is special and different to such plaintiff, to a private legal interest[,] . . . will likely flow from *the decision* through credible evidence." G. L. c. 40A, § 17 (as amended by 2024, 150, § 11, effective Aug. 6, 2024) (emphasis added). Stated otherwise, "[a] 'person aggrieved' is one who suffers some infringement of his legal rights. . . . The injury must be *more than speculative*, and plaintiffs must put forth credible evidence to *substantiate claims of injury* to their legal rights." *Sweenie v. A.L. Prime Energy Consultants*, 451 Mass. 539, 543 (2008) (cleaned up) (emphasis added).

More specifically, an abutter must prove a concrete harm resulting from the land use that the property developer has actually proposed, with supporting evidence, and that the ZBA has adjudicated, in a public hearing, and has approved, in a detailed written decision. "[T]he [correct] analysis is whether the plaintiffs have put forth credible evidence to show that they will be injured or harmed by *proposed changes* to an abutting property." *Picard v. Zoning Bd. of Appeals of Westminster*, 474 Mass. 570, 573 (2016) (emphasis added). Nowhere does the Act indicate or even suggest that an abutter can be "aggrieved" by a vague and hypothetical future land use that would differ markedly from the developer's proposed and approved land use.

Moreover, the Act's plain language requires the abutter to show that she is a "person aggrieved by *a decision* of the [zoning] board of appeals or any special permit granting authority." G. L. c. 40A, § 17 (emphasis added). And that "decision" concerns the developer's proposed land use, which the developer must defend with substantial supporting evidence at a public hearing. Since the developer's proposed land use is the focus of the ZBA's hearing and resulting written decision, and since that decision is, in turn, the basis for an abutter to establish aggrievement under § 17, it follows that the developer's proposed land use is the necessary basis for establishing standing to sue under the Act.

If left undisturbed, the Appeals Court's decision would subvert a municipality's long-established, statutorily delegated power to decide local land-use disputes in the first instance, subject to *subsequent* judicial review by "any person aggrieved." "The Legislature has long bestowed broad authority on cities and towns to regulate the use of land through various zoning enactments. . . . Th[at] authority . . . predates the adoption of the Home Rule Amendment." *Roma, III, Ltd. v. Bd. of Appeals of Rockport*, 478 Mass. 580, 585 (2018).

The Appeals Court has appropriated a municipality's historic police power to regulate land use by remanding the case to the trial court for a premature and purely speculative judicial proceeding concerning a potential future land-use dispute. At this "hearing," the developer must anticipate any potential future changes to its land use, and then anticipate any potential effects on abutters.

However, the Act authorizes the municipality, not a court, to exercise primary jurisdiction over a local dispute concerning a developer's compliance with a variance or special permit, *when* that dispute actually arises. *See Lussier v. Zoning Bd. of Appeals of Peabody*, 447 Mass. 531, 536 (2006) (where abutters appealed to local ZBA concerning developer's noncompliance with variance approving its proposed land use, Court upheld ZBA's order prohibiting developer from expanding land use until it applied for, and obtained, new or modified variance).

Therefore, the Act allows an abutter to challenge, before the local adjudicatory board itself, a developer's expansion of its land use. The board can then enjoin that activity and require the developer to apply for a new or modified variance or special permit. "[T]he board properly imposed conditions on the variance, apparent on its face, limiting the use of the [proposed building] . . . . Construction of a [building] contrary to these conditions requires a new or modified variance." *Lussier*, 447 Mass. at 531-32.

Such a local order would, in turn, trigger *another* public adjudicatory hearing and written decision concerning the developer's application for a new or modified variance or special permit. *See* G. L. c. 40A, § 9 (public hearing and written decision required for special permit application), § 10 (same required for variance application). And, of course, "any person aggrieved" by such a decision would have the right to judicial review under § 17 of the Act.

In short, the Legislature has provided a comprehensive scheme for the orderly local resolution of land-use disputes when they actually arise, subject to subsequent judicial review by "any person aggrieved." The Appeals Court's decision would supplant this comprehensive statutory scheme with a purely anticipatory and speculative "hearing" in the trial court that lacks

any real evidentiary basis. The court essentially disregarded the Act's remedial scheme and replaced it with its own policy preference for an anticipatory judicial hearing on "ordinary warehouse usage" and its potential effects on abutters.