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Court Case regarding denial of a site plan application

Planning boards cannot rely upon lay opinions and anecdotes refuted by uncontroverted expert evidence. Planning boards cannot supplant the specific regulations and ordinances that control the site plan review process with their own personal feelings.

Trustees of Dartmouth College v. Town of Hanover

New Hampshire Supreme Court Case No. 2017-0595, 11/6/2018

Dartmouth submitted a site plan application seeking approval for the construction of a 69,860 square foot Indoor Practice Facility (IPF) located in Hanover's Institutional Zoning District (I-District). The Hanover Zoning Administrator determined that the IPF would be fully compliant with the town's zoning ordinances. Hanover's planning board staff prepared a final memorandum recommending the approval of the application with 21 conditions. Nevertheless, the planning board voted to deny the application concluding that the college's site plan application; (1) did not conform with the Hanover Master Plan, (2) negatively impacts the abutters, neighborhood and others, town services and fiscal health, (3) does not relate to the harmonious and aesthetically pleasing development of the town and its environs.

Dartmouth appealed the board's decision to the Superior Court, arguing that the regulations relied upon by the board are vague, ambiguous, and not proper standards by which to review a site plan application. The trial court, nevertheless upheld the board's decision, ruling that the regulations the board relied upon are valid. The trial court also ruled that the board did not err by basing its decision on its concerns about the project's impacts on the abutters and the town.

On appeal the NH Supreme Court focused on Dartmouth's arguments that the planning board: (1) relied upon factual claims and a rationale, not supported by the evidence or the board's deliberations; and (2) engaged in ad hoc decision-making, employing personal feelings, rather than objective or discernible facts.

In support of its decision the IPF would negatively impact abutters the planning board found the structure would block an unreasonable amount of sunlight from reaching abutting homes. Upon close examination of the certified record the Supreme Court ruled that that in rejecting a professional light and shadow casting study submitted by Dartmouth the planning board improperly rejected uncontroverted expert evidence and instead relied upon lay opinions and general information that were insufficient to refute the experts' conclusions. *Continental Paving v. Town of Litchfield*, 158 N.H. 570 (2009). Moreover, the Court also ruled that any conclusion that the IPF is not harmonious with the character and development of the neighborhood, or the town and its environs, is directly contradicted by the finding of the Zoning Administrator the IPF was fully compliant with the town's zoning ordinance.

The planning board certified record included studies submitted by Dartmouth and prepared by a licensed appraiser who determined that the IPF would not impact the property values of the abutting neighborhood. Evidence submitted by the abutters refuting this opinion consisted of anecdotal statements and conclusory estimates, without supporting data, from residents and retired or unidentified real estate agents. Even if the board denied site plan approval based upon the IPF's negative impact on property values, the record failed to include evidence that would reasonably support such a finding.

The Court also ruled that the planning board relied upon personal feelings and engaged in ad-hoc decision making when it concluded that the IPF was out of harmony with the town and its environs. The Court observed that the planning board cannot supplant the specific regulations and ordinances that control the site plan review process with their own personal feelings, and then justify their reasoning through the application of general considerations. Although the Court emphasized that site plan review cannot be reduced to the mechanical process of determining conformity with specific zoning and site plan regulations, in this instance, the Hanover Planning Board's reliance solely upon general considerations to override the IPF site plan's conformity with specific regulations and ordinances, without sufficient evidentiary support for doing so was deemed unreasonable. Consequently, the Supreme Court reversed the trial court order upholding the planning board decision.

The Supreme Court further ruled that Dartmouth was entitled to a Builder's Remedy provided the college complies with each of the 21 conditions identified by Hanover's planning board staff. A builder's remedy rewards a successful plaintiff for his or her efforts in testing the legality of a land use decision. *Community Resources for Justice, Inc. v. City of Manchester*, 157 N.H. 152 (2008).

Conclusion: When a land use board is presented with uncontroverted expert evidence in support of an application, opposing views only supported by lay opinions and general information are insufficient to refute the experts' conclusions. Land use boards are entitled to rely in part on their own judgment and experience when acting upon applications. Nonetheless, a board's decision must be based on more than the mere personal opinion of its members. A land use board cannot supersede the specific regulations and ordinances that control the application review process with their own personal feelings and then justify their reasoning through the application of general considerations.