

# Town of Chelmsford, et al. v. Newport Materials, LLC, et al

November 2, 2017

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In Town of Chelmsford, et al. v. Newport Materials, LLC, et al., C.A. No. 1681CV03455 (Mass. Super. Ct. Sept. 6, 2017), the Town of Chelmsford appealed a Westford Planning Board (“Board”) decision granting Newport Materials, LLC and 540 Groton Road, LLC (collectively, “Newport”) special permits for the construction and operation of an asphalt manufacturing plant on property located in Westford, near the Chelmsford line.

## **Background**

In 2009, Newport filed applications with the Board seeking the special permits necessary to operate an asphalt manufacturing plant (the “Project”) on an industrially-zoned 115.52 acre lot (the “Property”). Ninety-two of the Property’s acres are in Westford, while the remaining twenty-three are in Chelmsford. The location of the Project is entirely within the Westford portion of the Property. After seven years of administrative proceedings and litigation between Newport, the Town of Westford, and the Board, the parties entered into a settlement agreement that included Westford’s issuance to Newport of a Special Permit for Major Commercial Project (“Special Permit”). The Special Permit was filed with the Westford Town Clerk on November 14, 2016.

The Town of Chelmsford (“Town”) thereafter appealed the issuance of the Special Permit to the Superior Court, alleging that the Project is inherently dangerous and poses a risk of fire because it will involve the use and storage of highly flammable and explosive materials. The Town does not own any property abutting the Property. The Town argued that it may be called upon to provide emergency aid to Westford should a fire occur, pursuant to a Mutual Aid Agreement entered between Westford, Chelmsford, and seventeen other signatories.

Newport brought a motion to dismiss pursuant to Mass. R. Civ. P. 12(b)(1) based on the Town’s alleged lack of standing, as well as under Mass. R. Civ. P. 12(b)(6) for failure to state a claim.

## **The Decision**

The Court allowed Newport’s motion to dismiss because the Town did not have standing under G.L. c. 40A, 17 as either (1) a “person aggrieved” by a decision of a zoning board of appeals or special permitting authority or (2) a “municipal officer or board” with “duties relating to the building code or zoning within the same town as the subject land.” The Court determined that alleged harms to the Town’s legal interests (specifically, the risk of fire, explosion and chemical contamination inherent in the use and storage of the highly flammable and explosive materials that would be used in operation of the proposed plant) were too speculative and remote to qualify the Town as an aggrieved party. The Court took particular note of an affidavit from a fire protection engineer

offered by Newport, which averred that the Project poses no special or unique danger of fire or explosion, will meet or exceed Massachusetts code requirements, and will have adequate fire protection. However, the Court noted that even if the Court accepted Plaintiff's allegations regarding the Project's special risk of fire or contaminant spill, the alleged harm to the Town from potentially having to provide emergency aid (along with sixteen other towns pursuant to the Mutual Aid Agreement) would still be too speculative to confer standing.

The Court also found that the Town did not have standing as a municipal officer or board, as the Town's officers do not have duties relating to the building code or zoning within the same town (Westford) as the Project. The Court noted that this provision of G.L. c. 40A, § 17 is exceptional in that it does not require a showing of injury to a legally protected interest, and therefore must be construed narrowly.

### **The Takeaway**

A municipality does not have standing to challenge a special permit granted to a project in a neighboring city or town unless the municipality can show that it is a person aggrieved pursuant to G.L. c. 40A, § 17. In order to confer standing, the alleged injury must be greater than mere speculation, which is a high bar for municipalities to meet in order to challenge projects that may cause them harm.