New Hampshire
2020 Land Use Law in Review

Part 2: *Cases*

New Hampshire Municipal Association
NH Office of Strategic Initiatives
2020 Land Use Law Conference
October 31, 2020

Benjamin D. Frost, Esq., AICP
Managing Director, Policy and Public Affairs
New Hampshire Housing
(603) 310-9361
bfrost@nhhfa.org
www.nhhfa.org

Today's Roadmap

- Intro: Finding the Law

- Part 1: Statutory Changes
  Federal Issues
- Part 2: NH Supreme Court Decisions
  Federal Cases

Introduction:
Finding the Law

Finding the Law

NH Statutes and Bills

- Revised Statutes Annotated (RSA)
  - www.gencourt.state.nh.us/rsa/html/indexes/default.html
- Search for Bills
  - http://www.gencourt.state.nh.us/bill_status/

NH Supreme Court Decisions

- www.courts.state.nh.us/supreme/opinions/index.htm

For Other Jurisdictions

- Cornell Law School
  - https://www.law.cornell.edu/
- Google Scholar
  - https://scholar.google.com/

Join Plan-link Nation! Confer with over 700 of your best friends

- https://www.nh.gov/osi/planning/services/mrpa/plan-link.htm

NH Municipal Association Legislative Bulletins

- www.nhmunicipal.org

Other Sources

- *Land Use, Planning and Zoning*. Peter Loughlin, Esq. New Hampshire Practice Series, vol. 15. LexisNexis. Updated annually
- NHMA's "Town and City," online searchable index and full-text articles
- ***Don't forget to talk with your municipal attorney.*** That's the person who will be defending you in court! …and who can help keep you out of court in the first place.

"An ounce of prevention…"

PART 2

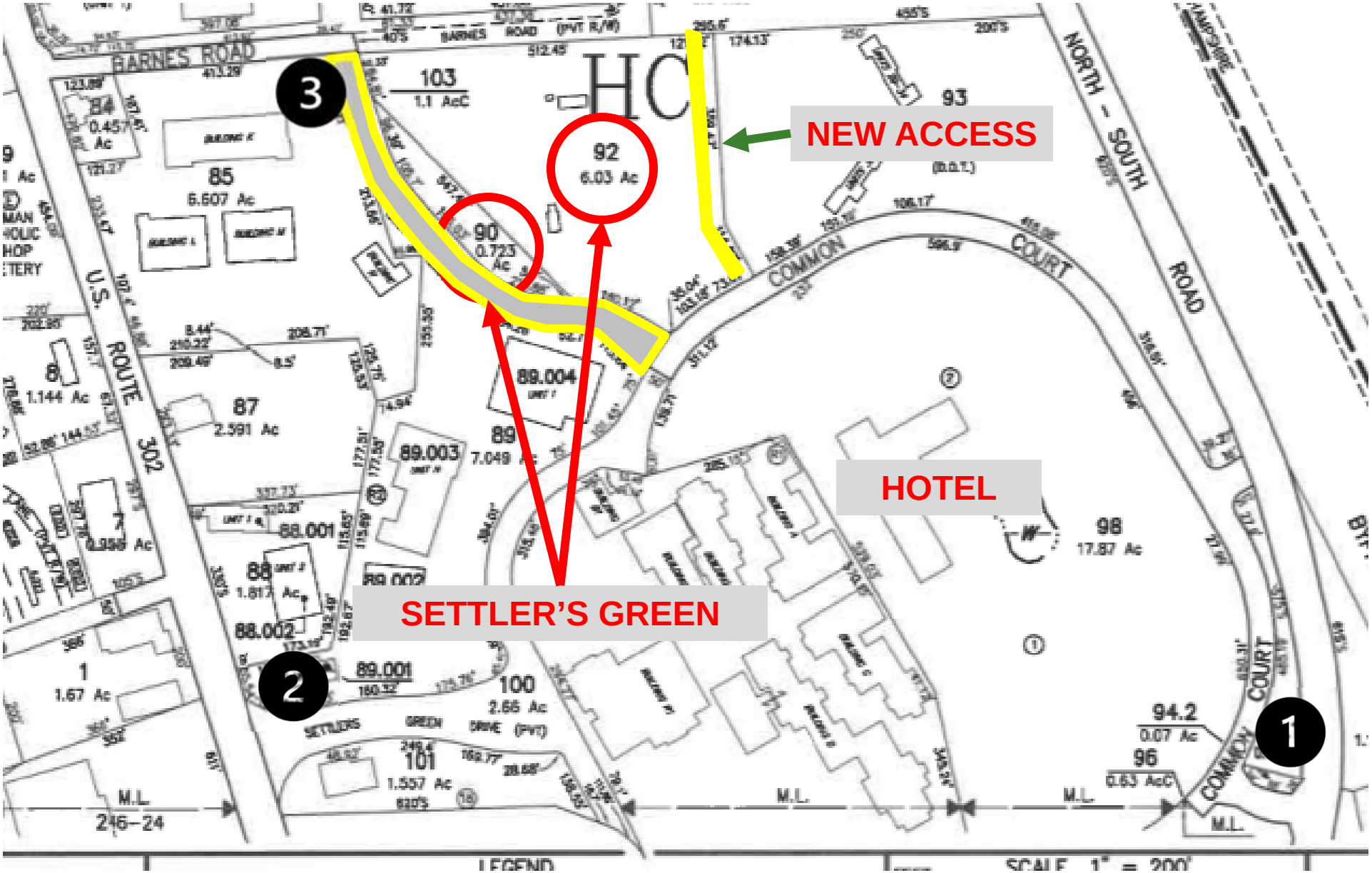
Cases

NH Supreme Court Decisions

- All NH Supreme Court opinions are available on its website – go to www.courts.state.nh.us, click on the Supreme Court and look for “Case Decisions”
  - Opinions – decisions on cases argued before the court
  - 3JX – accelerated decisions not for precedent
  - Other – decisions without oral argument
- You can also get onto the Supreme Court’s email list for notices of decisions.

Road Discontinuance

- ***Bellevue Properties v. Conway II (August 2020)***
  - Bellevue owns the North Conway Grand Hotel, adjacent to the Settlers' Green complex of outlet stores. Settlers owns adjacent lots (90 and 92) that it wants to develop for mixed use, including a grocery store and other retail/service uses (possibly also housing?)
  - Settlers' property is bisected by McMillan Lane, a town road


NEW ACCESS
HOTEL
SETTLER'S GREEN
3
2
1
BARNES ROAD
NORTH - SOUTH ROAD
COMMON COURT
U.S. ROUTE 302
92
6.03 Ac
90
0.723 Ac
93
98
17.87 Ac
96
0.63 AcC
94.2
0.07 Ac
100
2.66 Ac
101
1.557 Ac
89.004
89.003
7.049 Ac
89.001
89.002
88.001
88
1.817 Ac
87
2.391 Ac
85
6.607 Ac
84
0.457 Ac
103
1.1 AcC
1
1.67 Ac
M.L.
246-24
LEGEND
SCALE 1" = 200'

Road Discontinuance

- ***Bellevue II (cont'd)***
  - Subdivision application to create a new lot for a new private road
  - Settlers seeks discontinuance of McMillan Lane, negotiates with town
  - Town meeting 2017 adopts an amended article to discontinue McMillan Lane. Conditions: road stays open until Settlers gets planning board site plan/subdivision approval and builds an alternate road (with no access to the North-South Road!)
  - Settlers takes control of McMillan Lane
  - Bellevue files court appeal pursuant to RSA 231:48
  - Settlers' site plan and boundary line adjustment approved by the planning board, with condition: Settlers to "substantially complete and open to public use" the new road prior to closing McMillan Lane to public use

Road Discontinuance

- ***Bellevue II (cont'd)***
  - Town's evidence at trial:
    - Maintenance costs to be saved by town ($7,821/year)
    - Economic benefits
    - Additional housing (?)
  - Court also notes that the new access will serve the same purpose as McMillan Lane
  - Trial court: Discontinuance benefits to town outweigh the interests of Bellevue in keeping McMillan Lane open
  - Supreme Court – private owner vs. town regarding road discontinuance is a case of first impression!
  - Balancing test is correct, and not limited strictly to maintenance costs; also may include "indirect economic benefits"; burden of proof is on the plaintiff

Road Discontinuance

- ***Bellevue II (cont'd)***
  - Supreme Court –
    - Hotel access will continue
    - Settlers has done a good job maintaining its existing network
    - Bellevue never asked for an easement (!)
    - If Settlers fails to maintain, town sanctions are available (including site plan revocation)
    - Plaintiff failed to demonstrate that it would be harmed
    - Town stands to benefit
  - Affirmed
  - **Takeaways for planning board:**
    - Conducted an important function in a larger town process
    - Interpretation of town meeting's intention was critical

Planning Board Approval

- ***Bellevue Properties v. Conway I (April 2020)***
  - Concurrent site plan (subdivision?) application – 70K s.f. supermarket with food service, plus 5K s.f. business and personal service building
  - Site plan regulations refer to 1982 ULI parking guidance, but the board had consistently applied 1999 ULI guidance (and did here)
  - Approval with less-than-required parking was appealed and remanded on the issue of parking (otherwise affirmed)
  - On remand, the planning board granted a waiver from the parking requirements
  - Bellevue questioned the evidence presented, but the trial court was deferential to the planning board's factual findings; on appeal, the Supreme Court was deferential to the trial court
  - Affirmed

Planning Board Approval
A digression on waiver standards

- ***Site Plan Regulation Waivers– RSA 674:44, III(e)***
  - [Regulations shall…] Include provision for waiver of any portion of the regulations. The basis for any waiver granted by the planning board shall be recorded in the minutes of the board. The planning board may only grant a waiver if the board finds, by majority vote, that:

    (1) Strict conformity would pose an unnecessary hardship to the applicant and waiver would not be contrary to the spirit and intent of the regulations; ***or***

    (2) Specific circumstances relative to the site plan, or conditions of the land in such site plan, indicate that the waiver will properly carry out the spirit and intent of the regulations.
  - Conway's waiver standards are significantly different, and look like a zoning variance – *there is no clear statutory authority for this*
  - **For waivers of subdivision regulations, see RSA 674:36, II(n)**

Planning Board Approval
A digression on waiver standards

- Previously, waivers to regulations could only be granted for hardship. In 2007, the NH Supreme Court decided the Auger v. Town of Strafford case, rejecting a planning board's waiver because there was no demonstrated hardship.
- **On 12/31/2007, I wrote: "**Standards exist in regulations for a reason – at the time of their adoption the planning board thought they were a good idea. If the current planning board no longer thinks it's a good idea, then it should change the regulation, rather than to continue to waive the regulation. The problem is that no regulation can anticipate all circumstances, so waiver is sometimes appropriate. But what happens when a planning board is faced with a situation where a waiver will enable a better development, but denial will not present an 'undue hardship'? The board simply cannot grant the waiver."
- Subsequently, the Legislature established the second means of supporting a waiver, which I regard as a "common sense" rule

Planning Board Approval

- ***Bellevue I (cont'd)***
  - Evaluating the factual basis for a waiver, a traffic study suggested a 20-30% reduction in parking standards was warranted; the board allowed a 10% reduction – the plaintiff said that wasn't justified, because people won't walk from one parking lot to another
  - Supremes: "the board has the authority to resolve conflicts of evidence and assess credibility" – the board is a ***fact finder***
  - Board's decision regarding free and safe movement of traffic was supported by letters from police and fire departments; traffic study; technical drawings (e.g., plans!); and the board members' ***"own judgment and experience"***
  - **Case takeaway:** you can base a decision *in part* on personal experience
  - **Practice pointer:** compare your waiver standards with the statutes!

Technical Review and Right-to-Know Law

- Site Review Committee (not for subdivisions)
  - Under RSA 674:43, III the local legislative body may authorize the planning board to delegate minor site review to a committee of technically qualified staff.
  - What is “minor” is determined by the planning board
  - Committee decisions may be final or “advisory”, and are appealable to the planning board
  - *Few communities do this;* many others have a technical review group that informally gathers to review applications
- Right-to-Know Law – RSA 91-A
  - “Public body” includes “advisory committees” – group designated by appointing authority to provide advice or recommendations on public policy or legislation that may be promoted, modified, or opposed by such authority
  - Public bodies are subject to the right-to-know law

Right-to-Know Law & Technical Review

- ***Martin v. Rochester (2020)***
  - City Manager appointed a "technical review group" including representatives from planning, police, fire, building, economic development departments; City Manager alone has the power to disband the TRG and to appoint and remove members
  - No notices, no minutes, no public access to attend and observe
  - Planning board applicants do attend TRG meetings
  - TRG members advise the City Manager and the planning board, but the TRG *as a whole* makes no decisions
  - Streamlines departmental review of applications; economical for applicants; after meetings, Planner prepares notes – go to the applicant and the application file; also online as part of application record

Right-to-Know Law & Technical Review

- ***Martin (cont'd)***
  - Plaintiff wants access to the TRG meetings; takes action in superior court; claims that TRG is a public body because it is an advisory committee; trial court says no
  - Supreme Court
    - TRG meeting as a group doesn't make decisions or give advice; individual members speak as individual representatives of their departments
    - Process is meant to assist applicants (citing Richmond Companies v. Concord (2003)(government has a "constitutional obligation to provide assistance to all its citizens.”))
  - **Case takeaway:** think about your different groups in town and consider whether they meet the definitions of "advisory committee" and "public body"; then act accordingly

Variances

- ***Little Tree Education v. Dover (2020)***
  - Note: an *order*, not an *opinion* – skips a lot and gets to the point
  - Variance granted to allow expansion of an elderly assisted care facility from 12 to 24 beds (two variances had previously been granted for this use)
  - Appealed by an abutter (in Madbury) concerned about the septic system
    - Their hydrogeologist's report identifying concerns was uncontested
    - Variance upheld by trial court
  - On appeal, focus here is not on the 5 variance criteria, but whether the ZBA acted reasonably (this is the legal standard of review; also errors of law)
    - The criteria are buried in there somewhere

Variances

- ***Little Tree Education (cont'd)***
  - Uncontested hydrogeologist's report deemed by the City to lack "sufficient certainty"
  - Remember – board members' personal experience can form part of decision – *but not all of it*
  - ZBA met the abutter's concern with a condition: approval of the septic system by NHDES *and the Town of Madbury*, and approval of the well by NHDES
  - Affirmed
  - **Case takeaway:** you can meet factual assertions with appropriate process as a condition
    - We rely on experts to be impartial and professional

Special Exceptions (and DRI)

- ***Three Ponds Resort, LLC v. Milton (2020)***
  - Note: another *order*
  - Campground seeks SE to expand existing use from 223 by 173 (mostly for RVs)
  - Town's zoning has 5 criteria for SE
    - 3. "there will be no undue nuisance or serious hazard to pedestrian or vehicular traffic"
  - ZBA denies on the basis of #3; rehearing granted
  - Rehearing: Traffic study indicates no hazard; independent review *agrees;* applicant reduces request to 95 sites; rehearing recessed
  - Resumed rehearing – ZBA says it has to start over

Special Exceptions (and DRI)

- ***Three Ponds Resort (cont'd)***
  - Why restart? [Implicitly] Development of regional impact…
  - **Practice pointer:** with every application by a local land use board, you must ask the question (on the record): does this have the potential for regional impact? See RSA 36:54 – 58
    - What happens if you don't consider DRI?
      - You risk a claim that your review is illegal
  - On restart, nearby Maine towns are noticed, and others
  - ZBA denies on several criteria, but on appeal and before the Supreme Court focus remains on #3
  - Plaintiff claims that the traffic study was "uncontradicted" and the ZBA chose to rely on "personal, unsubstantiated, conclusory opinions."

Special Exceptions (and DRI)

- ***Three Ponds Resort (cont'd)***
  - Supreme Court:
    - ZBA can't disregard expert opinion based on vague and unsubstantiated concerns of residents – but it can rely on objective statements of fact
    - ZBA can't reject expert opinion based on members' subjective personal feelings – but they can consider their own knowledge resulting from familiarity with the area
  - Here: ZBA clearly expressed concerns that were not addressed by the traffic study, and they clearly identified unaddressed concerns related to the traffic study's methodology
  - Affirmed
  - **Case takeaway:** experts aren't perfect, but if you're going against their positions, address their points head-on with your own factual statements

Planning Board Approvals

- ***Dartmouth College v. Hanover (2018)***
  - Dartmouth proposes 70K s.f. indoor practice facility (IPF) adjacent to existing facilities in “Institutional” zoning district created by Hanover for the College and other similar entities
  - Location is known as the “sunken garden” and abuts residential zone with single-family homes
  - Ultimate design of IPF fully conforms to “stringent height limitations and setback requirements”
    - Setback of 150 feet for buildings with a maximum average height of 60 feet that abut a residential zone
  - Six months of hearings in 2016

Planning Board Approvals

- ***Dartmouth College v. Hanover (2018)***
  - Abutters complain of impact on neighborhood:
    - Loss of property value
    - Noise, pollution, impact on town's stormwater system
    - Lack of architectural detail
    - Building will block the winter sunlight from reaching their homes
  - Dartmouth conducts a "shadow study", which the abutters interpreted to show how many hours each house would be impacted
  - Zoning Administrator determines proposal to be fully compliant; staff recommends approval with 21 conditions; Dartmouth agrees to comply with conditions

Planning Board Approvals

- ***Dartmouth College v. Hanover (2018)***
  - Planning Board denies application 4-1, citing sections of Hanover's site plan regulations
    1. Does not conform to 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

    [**Note**: these partly echo RSA 674:44, SPR enabling law]
  - Dartmouth appeals, abutters intervene; town sits it out
  - No dispute that the IPF complies with zoning

Planning Board Approvals

- ***Dartmouth College v. Hanover (2018)***
  - Trial court upholds planning board's decision
    - Project's impact on abutting properties – blockage of sunlight
    - [Implied] Facts support a decision on board's personal feelings
  - Supreme Court
    - Dartmouth College
      - Vague and ambiguous standards
      - Ad hoc decision-making by board
      - Personal feelings not an appropriate basis for a decision
    - Abutters
      - Standards based on "observable character" of the location (*Deering v. Tibbetts*, 105 N.H. 481 (1964))
      - "Ordinary person" could understand and comply with Hanover's general conditions
      - Record supports trial court's decision

Planning Board Approvals

- ***Dartmouth College v. Hanover (2018)***
  - Supreme Court
    - Trial court unreasonably relied on facts not in the record
      - Abutters' analysis of College's shadow study inconclusive regarding 5 closest residences – but court relied on it anyway
      - Planning board was mixed on the issue of sunlight –
        - 1. Some shading already caused by existing intervening trees; hard to say how much additional blockage would occur
        - 2 & 3. Some mentioning of blockage, but one said regulations weren't sufficiently developed on the point; other vote against denial
        - 4 & 5. Didn't mention any objective criteria; one called IPF "an affront to the neighborhood."

Planning Board Approvals

- ***Dartmouth College v. Hanover (2018)***
  - Supreme Court
    - "…the record fails to support either of the trial court's conclusions that the board denied the application out of a concern that the IPF would deprive abutting homes of sunlight, or that there is sufficient support in the record to conclude that the IPF would negatively impact the abutting homes in this manner."
      - Note: while it's clear that the abutters evaluated Dartmouth's shadow study and both the Board and the trial court relied on those conclusions, it's unclear whether the Board itself separately evaluated the study.

Planning Board Approvals

- ***Dartmouth College v. Hanover (2018)***
  - Supreme Court
    - Planning board engaged in ad hoc decision making that relied on personal feelings
      - "…a planning board's decision 'must be based on more than the mere personal opinions of its members'" and members "may not deny approval on an ad hoc basis because of vague concerns." Citing *Ltd. Editions Properties v. Hebron*, 162 N.H. 488, 497 (2011)

Planning Board Approvals

- ***Dartmouth College v. Hanover (2018)***
  - Supreme Court
    - Board's site plan regulations require the board to assess a variety of "general considerations" including the three relied on by the Board
    - Supreme Court observes that abutters abandoned defense of the Planning Board's conclusion of master plan non-compliance
      - Cites *Rancourt v. Barnstead*, 129 N.H. 45 (1986)(planning board relied on master plan's growth limit recommendations as a basis for denying a subdivision approval)
      - Note: Master plan is a prerequisite for zoning and site plan regulations, but its contents are advisory only

Planning Board Approvals

- ***Dartmouth College v. Hanover (2018)***
  - Supreme Court
    - Other "general considerations"
      - Board reason 2: Negatively impacts the abutters, neighborhood and others, town services and fiscal health
      - Trial court erroneously construed the record to support the Board's conclusion regarding sunlight
        - Note: record appears to be devoid of facts related to services and fiscal health

Planning Board Approvals

- ***Dartmouth College v. Hanover (2018)***
  - Supreme Court
    - Other "general considerations"
      - Board reason 3: Does not relate to the harmonious and aesthetically pleasing development of the town and its environs
      - "Environs" is more than just the abutting properties, but includes the wider zoning districts
        - IPF is a permitted use in the Institutional zone and is consistent with existing adjacent uses – the "observable character" of the area (see *Tibbetts*, supra)
      - Abutters claim that there is no "meaningful or harmonious transition"
        - But that is precisely the purpose served by height limitations and setbacks

Planning Board Approvals

- ***Dartmouth College v. Hanover (2018)***
  - Supreme Court
    - Other abutter arguments
      - Dartmouth failed to address Board's concerns
        - Record is replete with College's efforts to accommodate the concerns of the Board and abutters, including additional vegetative screening and a berm
        - Repeatedly revised its plan, and staff concluded that the proposal complied with all requirements (plus 21 conditions)
      - Impact on abutters' property values
        - Dartmouth presented a study by a licensed appraiser demonstrating no impact; abutters presented anecdotal evidence

Planning Board Approvals

- ***Dartmouth College v. Hanover (2018)***
  - Supreme Court
    - Dartmouth asserts conflict of interest
      - Board Vice Chair's property "closely abuts" the College's athletic complex; she recused herself and actively opposed the IPF proposal
      - Even if this had been a conflict, the College did not raise this concern until it was too late
      - **Practice Point:** Conflicts must be raised at the earliest possible time

Planning Board Approvals

- ***Dartmouth College v. Hanover (2018)***
  - What is this case really about? Heed the warning of the dissenting Chair of the Planning Board – takings!
  - The Supreme Court observed that the abutters opposed any development in this location, and the Planning Board supported those views on the record
  - The Court: "…a planning board cannot use the site plan review process to require a landowner to dedicate its own property as open space for essentially public use without proper compensation."
  - **NH Constitution Part 1, Article 12:** "…no part of a man's property shall be taken from him, or applied to public uses, without his own consent, or that of the representative body of the people."
  - **US Constitution, Amendment V:** "…nor shall private property be taken for public use without just compensation."

Planning Board Approvals

- ***Dartmouth College v. Hanover (2018)***
  - "We do not suggest that site plan review should be reduced to the mechanical process of determining conformity with specific zoning and site plan regulations. In this case, however, the planning board's reliance solely upon general considerations to override the site plan's conformity with specific regulations and ordinances, without sufficient evidentiary support for doing so, was unreasonable. Sustaining the board's decision here would sanction a denial of a property owner's site plan application simply because board members felt that the owner's permitted use of its own property was inappropriate. Such a finding would render zoning 'obsolete, as it would afford no protection to the landowner.'"
  - **Result:** case reversed; builder's remedy awarded – meaning no return trip to town boards for further proceedings.

Case Take-Aways

- Especially in controversial cases, there should be thorough findings of fact developed to the board's decision; this makes it clear what served as the basis of the decision
- Abutters interests are important, but they don't reign supreme – the applicant has rights too, even if it's a huge "institution"
- Be mindful of your own clear standards; if an applicant is meeting them, reasons for a denial must be supported by compelling evidence and analysis
- Hypothetical musings
  - What result if the Board's denial were supported by thorough findings?
  - Did the recused Vice Chair unduly influence the other members?

Administrative Appeals

- ***Working Stiff Partners, LLC v. Portsmouth (2019)***
  - Single-family dwelling used for short-term rentals (e.g., AirBnB)
    - Up to 9 guests, daily pay schedule, “suitable for family parties, wedding parties, and corporate stays”
    - Owners reside in house on adjacent property
    - No one uses the premises as a primary residence
  - Complaints registered with City – not about noise or nuisance, just that the use wasn’t permitted
  - City issues Cease & Desist; appealed to ZBA
  - ZBA – ultimately upholds staff interpretation that short-term rentals are not a permitted use in the zone
  - Trial court affirms ZBA

Administrative Appeals

- ***Working Stiff Partners (cont'd)***
  - Plaintiff argues that use of the property for short-term rentals fits within the City's definition of dwelling unit
  - Supreme Court reviews the structure of the ordinance
    - "Permissive zoning" – allowed uses must be "expressly permitted, or incidental to uses so permitted."
    - District: General Residence A
      - Permitted: "single-family, two-family, and multi-family dwellings, with appropriate accessory uses"; density up to 12 units/acre; B&B up to 5 guests by special exception

Administrative Appeals

- ***Working Stiff Partners (cont'd)***
  - Supreme Court reviews the structure of the ordinance
    - Zoning ordinance definitions
      - Dwelling unit: independent living facility – living, sleeping, eating, cooking, sanitation; shall not be deemed to include such transient occupancies as hotels, motels, rooming or boarding houses."
        - "Transient" and "transient occupancy" not defined
          - Dictionaries: "transient" means "brief stay"
      - "Hotel" and "motel" – daily rates; "boarding house" – room rental, no separate kitchen or bathroom
    - Principle of "ejusdem generis" – *of the same kind;* a general class accompanied by an illustrative list; the class is limited to things that are similar to those included in the list

Administrative Appeals

- ***Working Stiff Partners (cont'd)***
  - Supreme Court reviews the structure of the ordinance
    - Plaintiff argues that a dwelling unit becomes a "transient occupancy" only when the internal layout is such that access to independent living facilities is limited
    - Court: consider the definition as a whole – hotel, motel, rooming and boarding houses: "…the unifying feature that these 'occupancies' share is the provision of short-term lodging accommodations to paying guest for as little as one day."
    - Court: zoning district purpose is for dwelling units; plaintiff's use is not for that purpose

Administrative Appeals

- ***Working Stiff Partners (cont'd)***
  - Plaintiff also argues that the ordinance is unconstitutionally vague
    - Tests:
      1. Does it fail to provide people of ordinary intelligence a reasonable opportunity to understand what conduct it prohibits? or
      2. Does it authorize or encourage arbitrary and discriminatory enforcement?
    - Court: perfect clarity and precise guidelines are not required
      - Here: sufficiently clear to provide the plaintiff with a reasonable opportunity to understand that its use was not permitted
  - Result: ZBA's (and trial court's) decision affirmed on all counts

Administrative Appeals

- ***Working Stiff Partners – Case Take-Aways***
  - Does this mean that municipalities can regulate short-term rentals?
    - Yes, sort of: this is a case about interpretation of the words in an ordinance, not about the question of regulating short-term rentals
    - So if your zoning language is identical to Portsmouth's…
  - **Court's Footnote:** "We note, as did the trial court, that this case does not present us with the occasion to address whether short-term rentals are allowed under the ordinance as an accessory use to a permitted principal use. … Nor does this case involve an application for a variance."

PART IV
Federal Issues

Signs after *Reed v. Gilbert* (2015)

- ***Willson v. Bel-Nor* (MO), (8th Cir., 5/20/19)**
  - Willson had three stake-mounted, freestanding signs (2 political candidates, one political/philosophical statement)
  - Bel-Nor ordinance addresses size, placement, etc.
    - Only one political advertising sign (to be removed within 15 days after election) and
    - One flag per parcel,; flags limited to those "used as a symbol of a government or institution
  - Enforcement action undertaken
  - Willson seeks injunctive relief, citing 1st Amendment Free Speech Clause, claiming that restrictions were content-based; District Court denies injunction

Signs after *Reed v. Gilbert* (2015)

- ***Willson v. Bel-Nor* (cont'd)**
  - On appeal, 8th Circuit reverses and remands
    - *Reed*: "Government regulation of speech is content based if a law applies to particular speech because of the topic discussed or the idea or message expressed."
    - 8th Circuit: hard to imagine how these are not content based
      - Strict scrutiny: government action must further a compelling governmental interest and is narrowly tailored to that end

Signs after *Reed v. Gilbert* (2015)

- ***Willson v. Bel-Nor* (cont'd)**
  - Bel-Nor: traffic safety and aesthetics
    - Not *compelling*; ordinance is not *narrowly drawn*
  - Ordinance also deemed to be overbroad (are a substantial number of the law's applications unconstitutional, despite legitimate objectives?)
    - Homeowners prevented from endorsing more than two candidates
    - Alternative channels of communication not open
      - The right to speak *from one's own home* is specially significant
  - Injunction granted because Willson is likely to succeed on the merits

Takings (5A: "…nor shall private property be taken for public use, without just compensation.")

- ***Knick v. Township of Scott, PA (2019)***
  - Local law required public access to all cemeteries
  - Knick's property contained a family plot, and relatives of those buried there sought access; municipality required Knick's private property to be partly open to the public during daylight
  - Knick sued in federal court, alleging an unconstitutional taking
  - Trial court dismissed; appellate court affirmed dismissal – not "ripe" because no state court had denied compensation
  - Rule of *Williamson County* (1985):
    1. A final decision resulting in a taking must have occurred; but
    2. Federal takings claim is not ripe until state process has been exercised for determination of just compensation
  - Prong #2 explicitly overruled by Knick
  - **Impact to you?** This only affects appellate process (but could result in more claims)