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LIBERAL INTERPRETATION?

What Would Antonin Scalia Say?

SJC Finds Implied Limitation Of Trial Court Jurisdiction Over Major Development Projects

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SPECIAL TO BANKER & TRADESMAN

In the wake of his death, it has been noted that United States Supreme Court Justice Antonin Scalia endeavored to interpret the meaning of constitutional and legislative words using only the words themselves, as opposed to legislative history or other interpretive means. But what happens when the words are confusing?


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The Massachusetts Supreme Judicial Court (SJC) recently faced this dilemma in the case of *Skawski v. Greenfield Investors Property Development LLC*, which answered the question of whether the state's Land Court and Superior Court have exclusive jurisdiction over "major development projects" – i.e., projects involving greater than 25 housing units, or greater than 25,000 square feet of gross floor area. Using legislative history to aid its interpretation of the rather muddled law on this subject, the SJC answered in the affirmative.

Conflicting Laws?

In *Skawski*, the residential abutters of a proposed 135,000-square-foot commercial building in the city of Greenfield filed in the state Housing Court an appeal of the Greenfield Planning Board's allowance of the project. Asserting that the Housing Court does not have jurisdiction over major development projects, the developer moved to dismiss the appeal. The Housing Court denied the motion, but the Appeals Court later agreed that the Housing Court does not have this jurisdiction, before the SJC decided to step in and resolve the conflict.

The SJC's decision was not an easy one, for there are two competing statutes on the subject of Housing Court jurisdiction to hear appeals from local-permitting decisions. For many years, Massachusetts General Laws Chapter 40A, Section 17, has provided that all such appeals can be heard by any of the state's trial courts – Land, Superior, Housing and District. However, in 2006, the Legislature enacted Massachusetts General Laws Chapter 185, Section 3A, which created a "permit session" of the Land Court and gave it "original jurisdiction, concurrent with the Superior Court," over local-permitting appeals involving the "major" development projects defined above. The statute also provided that any such appeals commenced in the Superior Court may be transferred to the permit session of the Land Court, at least when (as is customary) the appeal does not involve any jury-trial claim.

The SJC concluded that, interpreted literally, the two statutes are not in conflict. For one, because it did not characterize the concurrent Land Court and Superior Court jurisdiction as "exclusive" (the legislative word typically used to exclude other possibilities), the Legislature did not specifically negate the jurisdiction of the Housing Court or the District Court – "The words of § 3A do not explicitly divest the Housing Court of jurisdiction over major development permit appeals."

The SJC's decision likely will be seen as favorable to developers; all major development appeals must now be heard in Land Court or Superior Court.

Now Justice Scalia may have stopped there, forcing the Legislature – if anyone – to rewrite the law. But the SJC instead analyzed the statute's legislative history, noting that the newer law sprung out of "An Act relative to streamlining and expediting the permitting process in the commonwealth," and citing a supportive legislator's statement that busi-

nesses had been complaining about the state's long permitting process. Based upon the legislative history, and the apparent futility of creating an expeditious Land Court session for major development appeals, while allowing the same appeals to be heard by the Housing Court or the District Court in a less expeditious manner, the SJC found that the Legislature must have intended to eliminate all Housing Court and District Court jurisdiction over these cases.

Development Bane Or Boon?

The SJC's decision likely will be seen as favorable to developers. All major development appeals must now be heard in Land Court or Superior Court. The prevailing wisdom is that these courts (with their shorter dockets and greater big-case experience) are better equipped than Housing Court or District Court to address major development projects, and that the latter courts can be friendlier to the local opponents of major development projects. (This may be why, in each of the prior cases analyzed by the SJC, the developer was trying to get the case into – and its opponent was trying to keep the case out of – the Land Court, and it may also be why the Massachusetts Fair Housing Center filed an SJC brief in support of the *Skawski* plaintiffs.) In any event, when the appeal of a major development project is filed in (or transferred to) the Land Court's permit session, it will be decided on a relatively expedited basis by judges with an ever-growing knowledge of these particular cases. In light of these considerations, it is indeed hard to conclude that developers will come to regret the *Skawski* decision. ■

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