Legal Issues for Land Use Board Members
Supplement

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Land Use Boards Can Reconsider Their Decisions

In a decision issued on 9/21/07, the NH Supreme Court ruled that land use boards have the inherent authority to reconsider their decisions within the statutory time period for appeal to the Superior Court. 74 Cox Street LLC v. City of Nashua, 155 NH ____, (decided September 21, 2007). Although the decision in 74 Cox LLC concerned the Nashua ZBA, the breadth of the Court's reasoning logically extends this authority to reconsider decisions to all land use boards.

In 74 Cox LLC, the Nashua ZBA had granted a variance in September of 2005, and aggrieved abutters filed a timely motion for rehearing. On December 6, 2005, the Nashua ZBA denied the rehearing motion. On December 13, 2005, the Nashua ZBA received a letter from aggrieved abutters complaining that the Board had not received documents that accompanied their original motion for rehearing, and they asked the ZBA to reconsider its decision. At its meeting on December 13, 2005, the ZBA voted to reconsider the denial of the motion for rehearing, and scheduled a hearing for January 10, 2006, where the ZBA would consider whether to grant or deny the original motion for rehearing. In effect, the ZBA revived the original motion for rehearing. At its meeting of January 10, 2006, the ZBA voted to grant the motion for rehearing and scheduled a date for the rehearing hearing. Before that rehearing hearing could be held, the party that had been originally granted the variance appealed to the Superior Court.

The NH Supreme Court held that it was proper for the Nashua ZBA to reconsider its decision because it had acted to grant the reconsideration request before the 30 day appeal period had expired. In so doing, the Court again reaffirmed that a local land use board should have the first opportunity to correct any errors in its decisions before any appeal is heard in the Superior Court.

Practice Pointers:

1. The ability to reconsider a decision must be exercised before the statutory appeal period has run. For a ZBA, that means within the 30 days after the day of the ZBA's decision on the motion for rehearing. For the Planning Board that means within 30 days from the date the Board approved or denied a plat or plan,

2. The ZBA should adopt a bylaw prescribing the period of time when a motion to reconsider can be filed. The Planning Board could either adopt a bylaw or insert a reconsideration provision in the subdivision and site plan regulations.