

CITY OF NEWTON
LAW DEPARTMENT
INTEROFFICE MEMORANDUM

DATE: August 19, 2016

TO: City Council

FROM: Ouida C.M. Young, Deputy City Solicitor

RE: *135 Wells Avenue, LLC v. Housing Appeals Committee, Newton Zoning Board of Appeals et al*
Land Court Permit Session No. 16 PS 000034 (RBF)

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Earlier this week, we received the decision of the Land Court in the above referenced case. In a well-reasoned decision, Judge Foster supported the position of the City, the Newton Zoning Board of Appeals, and the decision of the Housing Appeals Committee ("HAC") that Chapter 40B could not be used to set aside the deed restriction held by the City in the Wells Avenue Office Park.

As you may recall, this case involved a Chapter 40B project proposed by Cabot Cabot and Forbes for property located at 135 Wells Avenue. The City holds a restriction on the entire Wells Avenue Office Park that imposes both use and dimensional controls on the Office Park in addition to the restrictions set out in the Zoning Ordinance. Residential use is not permitted under the deed restriction.

After the City Council declined to amend the deed restriction to allow the Chapter 40B project and the ZBA denied the Chapter 40B project on the grounds that it lacked jurisdiction to set aside the deed restriction, Cabot Cabot and Forbes appealed the denial to HAC. HAC supported the ZBA's denial. Cabot Cabot and Forbes then appealed HAC's decision to the Land Court, which has also supported the ZBA's denial of the Chapter 40B project. Cabot Cabot and Forbes can, and probably will, appeal this latest denial to the Appeals Court.

Congratulations are due to Assistant City Solicitors Suzanne Egan and Julie Ross who ably represented the ZBA before both HAC and Land Court. Please call Assistant City Solicitor Suzanne Egan or me if you have any questions regarding this litigation. Thank you.

cc: Setti D. Warren, Mayor
Dori Zaleznik, COA
Barney Heath, Director, Planning and Development Dept.