

**UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF NEW HAMPSHIRE**

OMNIPOINT COMMUNICATIONS, INC *
*
v. * CASE NO. 1:07-CV-00046-PB
*
CITY OF NASHUA and CITY OF NASHUA *
ZONING BOARD OF ADJUSTMENT *
*

ANSWER

The Defendants in the above-captioned matter, by counsel, by way of Answer to the Complaint, state as follows:

1. The allegations of the first two sentences of paragraph 1 are admitted. The allegations of the third sentence are denied.
2. As to the allegations of paragraph 2, the Defendants have insufficient information to form a belief as to the truth of the averments.
3. The allegations of paragraph 3 are admitted.
4. The allegations of paragraph 4 are admitted.
5. The allegations of paragraph 5 are admitted.
6. The allegations of paragraph 6 are admitted.
7. The allegations of paragraph 7 are admitted.
8. The allegations of paragraph 8 are admitted, except that the Defendants have insufficient information to form a belief as to the truth of the averments as to the Association's authority.

9. The allegations of paragraph 9 are admitted.
10. The allegations of paragraph 10 are admitted. However, a conditional use permit from the Planning Board is also required.
11. The allegations of paragraph 11 are admitted, except that the section is 16-433.
12. The allegations of paragraph 12 are admitted.
13. The allegations of paragraph 13 are admitted.
14. The allegations of paragraph 14 are admitted. The decision responded to evidence submitted by the parties.
15. The allegations of paragraph 15 are admitted.
16. The allegations of paragraph 16 are denied, except that the comments, quoted out of context, were made by individual Zoning Board of Adjustment members.
17. The allegations of paragraph 17 are denied.
18. The allegations of paragraph 18 are denied. Moreover the distinctions between the Coburn Woods organization and a condominium are not important for purposes of this case.
19. The allegations of paragraph 19 are denied.
20. The allegations of paragraph 20 are admitted. However, the "utilities and improvements" were intended to be for the direct benefit of the unit owners, not purely as a revenue source.

21. The allegations of the first sentence of paragraph 21 are denied. The allegations of the second sentence are admitted. The Board concluded that some interference with pedestrian travel would occur.

22. The allegations of the first and fourth sentences of paragraph 22 are admitted. The allegations of the second and third sentences are denied.

23. The allegations of paragraph 23 are admitted. However, the Board of Adjustment was persuaded, considering all the evidence, that the tower did not satisfy all criteria.

24. The allegations of paragraph 24 are denied.

25. The allegations of paragraph 25 are denied. The Board can and did reasonably consider and weigh the significance and persuasiveness of all evidence.

26. The allegations of paragraph 26 are denied. The Board can and did reasonably consider and weigh the significance and persuasiveness of all evidence.

27. The allegations of the first sentence of paragraph 27 are admitted. The Defendants have insufficient information to form a belief as to the truth of the averments of the second sentence.

28. The allegations of paragraph 28 are admitted. However, the report, itself, refutes the opinions expressed in the attached studies.

29. The allegations of paragraph 29 are admitted.

30. The allegations of paragraph 30 are denied, except for the citation to the Cormier case.

31. The allegations of paragraph 31 are admitted.
32. The allegations of paragraph 32 are admitted.
33. The allegations of paragraph 33 are admitted. However, the diminution of property values strongly implies impairment of the integrity and character of the district or neighborhood.
34. The allegations of paragraph 34 are admitted. However, the applicant failed to provide such an appraisal at its own risk.
35. The allegations of paragraph 35 are denied. Diminution of property values strongly implies impairment of the integrity and character of the neighborhood.
36. The allegations of paragraph 36 are denied.
37. The allegations of paragraph 37 are admitted.
38. The allegations of paragraph 38 are admitted.
39. The allegations of paragraph 39 are admitted. However, these were merely the remarks of individual members during deliberations.
40. The allegations of paragraph 40 are denied. The Board of Adjustment did not vote that the applicant had to apply for a variance. The 1972 plans and variance are evidence of the character of the neighborhood. The proposed tower does, however, also requires a conditional use permit from the planning board.
41. The allegations of paragraph 41 are denied.
42. The allegations of paragraph 42 are admitted.
43. The allegations of paragraph 43 are admitted.

44. The allegations of paragraph 44 are admitted.
45. The allegations of paragraph 45 are admitted.
46. The allegations of paragraph 46 are admitted, except that the evidence was contradicted by evidence submitted by other parties.
47. The allegations of paragraph 47 are denied. The Board reasonably found, based on all evidence, that not all criteria were satisfied.
48. The allegations of the first sentence of paragraph 48 are admitted. The allegations of the second sentence are denied. The Board indicated that the applicant's argument for unfeasibility is financial, not technical.
49. The responses to the allegations of paragraphs 1 through 48 are incorporated by reference.
50. The allegations of paragraph 50 are denied.
51. The responses to the allegations of paragraph 1 through 50 are incorporated by reference.
52. The allegations of paragraph 52 are admitted.
53. The allegations of paragraph 53 are denied.
54. The responses to the allegations of paragraph 1 through 53 are incorporated by reference.
55. The allegations of paragraph 55 are admitted.
56. The allegations of paragraph 56 are denied.

First Defense

The Defendants incorporate the responses of the Answer as to the merits of the Complaint.

Second Defense

Under Section 16-69 of the Nashua zoning ordinance the proposed tower is also subject to a conditional use permit from the City of Nashua Planning Board.

WHEREFORE, the Defendant City of Nashua and the Nashua Zoning Board of Adjustment respectfully request that the Court:

- A. Dismiss the Plaintiff's complaint; and
- B. Grant such other relief as may be just.

Respectfully submitted,

THE CITY OF NASHUA AND NASHUA
BOARD OF ADJUSTMENT
By its Attorneys,
Office of Corporation Counsel

Dated: April 27, 2007

/s/ David R. Connell

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the Answer of City of Nashua and Nashua Zoning Board of Adjustment has been sent via electronic filing to Jennifer L. Parent, Esquire.

Dated: April 27, 2007

/s/ David R. Connell

David R. Connell, Esquire