

## Un-Neighborly Conduct: Adjacent Town Lacks Standing to Block Asphalt Plant



Image Credit: [rulenumberone2](#)

In the latest battle in the ongoing dispute over a proposed asphalt plant in Westford abutting the Chelmsford town line, the Superior Court recently held that Chelmsford has no standing to appeal special permits issued by the Westford Zoning Board of Appeals. The case is *Town of Chelmsford, et al. v. Newport Materials, LLC, et al.*

After seven years and two Land Court decisions for the developer, the Town of Westford finally settled in 2016, issuing a special permit with protective conditions. One condition requires the developer to offer safety training regarding the asphalt plant to the Chelmsford Fire Department, reflecting that Westford and Chelmsford are parties to a mutual aid agreement for fire protection.

Chelmsford and its Fire Chief appealed the special permit. The court found that Chelmsford had no standing to appeal. It noted the un rebutted expert testimony that the asphalt plant would not pose an elevated risk of fires or spills, and it found that the permit's fire protection conditions reduced the chances of a fire, making Chelmsford's argument about risk to its firefighters speculative. The court specifically declined to rely on the towns' mutual aid agreement as a basis for standing. It observed that 16 other towns are parties to the same agreement, and that there are presumably "many more such agreements between other communities in the Commonwealth" since such agreements are authorized by *G.L. c. 48, § 59A*.

The court also rejected the Chelmsford Fire Chief's assertion of standing. It followed *Planning Bd. of Marshfield v. Zoning Bd. of Appeals of Pembroke, 427 Mass. 699, 703 (1998)*, which held that a town's planning board lacked standing to appeal permits issued in a neighboring town. Since planning and zoning officials ordinarily cannot appeal permits in another town, fire officials cannot, either.

This case serves as a reminder to municipalities regarding projects in adjacent towns, which may impose traffic, environmental and other impacts as significant as projects in their own towns. When a town learns of plans for a significant project outside its borders, it should raise its concerns and seek protective conditions in the local permitting process. Unless it owns land abutting the project site, its rights to appeal permits for that project are limited.

(Note: A separate appeal by abutting residents in Westford and Chelmsford is pending in the Superior Court. A hearing on the proponent's motion to dismiss is scheduled for November.)