

December 16, 2004

Edward G. English, Clerk  
Zoning Board of Appeals of the City of Newton  
Newton City hall  
Newton, Massachusetts

Re: Petition for a Comprehensive Permit of  
Citizens for Affordable Housing in Newton  
Organization, Inc d/b/a/ CAN-DO

Dear Mr. English:

Notice is hereby given that an appeal has been taken from the approval of the  
above referenced comprehensive permit, Docket No. 18-04 with respect to the property  
located at 248 Elliot Street, Newton (section 51, Block 32, Lot 1).

Please note that said appeal was taken by the filing of the attached Complaint in  
Middlesex Superior Court on December 16, 2004.

Yours Truly,



Mark A. White, Attorney  
for Edward Costa and Anna Costa  
and Beth A. Corr

2004 DEC 16 PM 4:03  
CITY CLERK  
NEWTON, MA 02459

Enclosure

Commonwealth of Massachusetts

Middlesex, SS

LAND COURT DEPARTMENT  
NO.

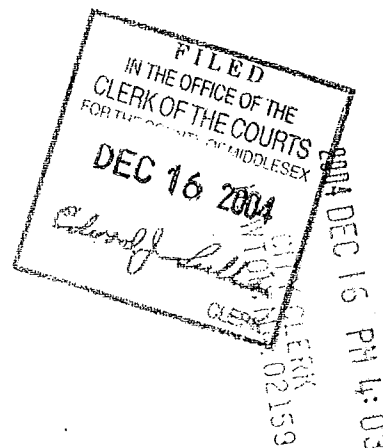
04-1977

EDWARD COSTA and ANNA COSTA )  
And BETH CORR )  
Plaintiffs )

VS )

CATHERINE CLEMENT, ROBERT CORBETT, )  
TRUDY ERNST, BERNARD SHADAWY )  
and WILLIAM STEIN as they are Members of )  
the Zoning Board of Appeals of the City of Newton )  
and CITIZENS FOR AFFORDABLE )  
HOUSING IN NEWTON DEVELOPMENT )  
ORGANIZATION, INC. d/b/a CAN-DO )

Defendants



COMPLAINT

1. Plaintiffs, Edward Costa and Anna Costa and Beth A. Corr, are residents of Massachusetts currently living at 20 Linden St. and 248 Elliot St, respectively, Newton, Middlesex County.

2. Defendant, Citizens for Affordable Housing in Newton Development Organization, Inc. d/b/a CAN-DO, (hereinafter "CAN-DO") is a corporation duly organized by law having a usual place of business in Newton, Massachusetts.

3. All remaining defendants are members of the Zoning Board of Appeals of the City of Newton (hereafter the "ZBA") the Permit Granting Authority for Comprehensive Permits pursuant to G.L. Ch. 40B.

4. The parcel of land which is the subject matter of this Complaint is located in the City of Newton, County of Middlesex, Massachusetts, and is known and numbered 248 Elliot St.

5. On or about September 30, 2004, defendant, CAN-DO, submitted a petition for a Comprehensive Permit to allow construction of townhouse units pursuant of G.L. Ch. 40B.

6. On or about October 26, 2004, the ZBA held a public hearing on the Petition.

7. On or about October 26, 2004 the ZBA approved the petition of CAN-Do by a vote of 5-0

8. On or about November 26, 2004, the decision was written.

9. The actions of the ZBA in granting the petition were arbitrary and capricious.

10. The ZBA acted in excess of their authority in granting said petition.

#### Count I – ARBITRARY AND CAPRICIOUS ACTION

11. Plaintiffs incorporate paragraphs 1-10 as if the same were more fully set out.

12. Plaintiffs are abutters to the petitioned for site and are ‘aggrieved persons’ under Massachusetts law.

13. Defendant, ZBA, in granting said petition, failed to comply with G.L. Ch. 40 B in that the defendants’ determination that the petition was “consistent with local needs” was without foundation.

14. Defendant, ZBA, failed to adequately consider the health and safety of the occupants of the proposed housing or the residents of the city or town.

15. Defendant, ZBA failed to obtain evidence that the City of Newton does not comply with 760 C.M.R. 30.12, 31.04.

December 16, 2004

Edward G. English, Clerk  
Zoning Board of Appeals of the City of Newton  
Newton City hall  
Newton, Massachusetts

Re: Petition for a Comprehensive Permit of  
Citizens for Affordable Housing in Newton  
Organization, Inc d/b/a/ CAN-DO

Dear Mr. English:

Notice is hereby given that an appeal has been taken from the approval of the above referenced comprehensive permit, Docket No. 18-04 with respect to the property located at 248 Elliot Street, Newton (section 51, Block 32, Lot 1).

Please note that said appeal was taken by the filing of the attached Complaint in Middlesex Superior Court on December 16, 2004.

Yours Truly,



Mark A. White, Attorney  
for Edward Costa and Anna Costa  
and Beth A. Corr

Enclosure