FEDERAL AVIATION AND RAILROAD LAWS LEAVE ROOM FOR LOCAL REGULATION

Another legal issue that arises occasionally is that of conflict between federal law and local land use law. The Vermont Supreme Court ruled in favor of local land use law in two cases last year where that issue was raised.

The supremacy clause in the U.S. Constitution, Article VI, Clause 2 states that "the laws of the United States … shall be the supreme law of the land." Thus, if a federal law explicitly or implicitly preempts other laws or, on its face, actually overrules another law or is so broad that it covers the entire matter which is subject to that law, it will be held to preempt any state or local law pertaining to that matter.

The first case was *In Re Commercial Airfield,* Vt. No. 99-079 (Jan. 27, 2000) which involved a private airfield that consisted of a runway and maintenance shop for a commercial crop-dusting business. The Environmental Board ruled that the airfield needed an Act 250 permit. Appellant Edward Peet argued that federal law preempts any state or local law because it "pervasively and fully [occupies] the field of aviation," thus leaving no room for state or local law.

The Court began by saying that the purpose of the Federal Aviation Act (FAA) is to promote air traffic safety and that it has exclusive jurisdiction over airspace in the United States. In contrast, Act 250's purpose is "to protect and conserve the environment of the state." There is no explicit conflict of purpose in the two laws. The FAA does give the EPA input regarding environmental concerns stemming from large, public airports, but the small, private Peet airport is not in that category.

Secondly, while the FAA provides for federal input regarding the impact of airport construction on such things as air traffic patterns and man-made structures, it explicitly "does not relieve the proponent of responsibility for compliance with any local law, ordinance or regulation, or state or other [f]ederal regulation…. [E]nvironmental impact and land use compatibility are matters of local concern and will not be determined by the FAA" *Id.* at 2. The Court also cited a letter from the FAA about a small airport in which it said that although certain matters such as aircraft operations and noise were preempted by federal law "to the extent the [local] ordinance regulates land use in the Town …, it is not preempted by federal regulation of aviation." *Id.* at 2.

The other recent case is *In Re Appeal of Vermont Railway,* Vt. No. 99-350 (Dec. 8, 2000). Here, Vermont Railway acquired a property in the City of Burlington that includes a roofing company, metal works, storage facilities, and a salt shed. Prior permits for these properties imposed certain conditions on the use of the property. The Railway argued that these conditions were no longer valid because the local land use law was preempted by the Interstate Commerce Commission Termination Act (ICCTA), which regulates railroad operations.

Without getting into too many details of the law, suffice it to say that the ICCTA itself, a number of cases cited from other states, and the Vermont Supreme Court make it clear that the ICCTA does not usurp the right of state and local governments to impose conditions which will regulate public health and safety aspects of property owned by railroads. Any determination of the validity of local regulations must be done on a caseby- case basis. In this case, the local permit conditions controlling truck traffic, parking, and contamination from the salt shed were upheld as matters of local safety and public health.

In summary, towns should not assume (or let someone convince them) that a federal or state law will automatically preempt their local planning and zoning laws. Each case must be examined carefully by examining the pertinent laws and the exact facts of the situation.

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