



## LAW OF THE LAND

# Court Allows Developer's Civil Rights Action in Haverhill

'Class of One' Suit Accuses Officials of Unfair Treatment

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When real estate developers have difficulties securing permits, they often blame municipal officials for singling them out unfairly. Last December, a federal magistrate judge in Massachusetts allowed a developer to maintain a civil rights lawsuit against Haverhill's mayor and deputy public works director under these circumstances in *Maroney v. Fiorentini*.



According to Michael Maroney's complaint in the U.S. District Court for Massachusetts, he purchased land in Haverhill for a 50-lot residential subdivision in 2009. An engineer's report indicated that the public water system lacked adequate pressure for the development, so Maroney committed to build a water booster station by Nov. 1, 2016. Haverhill's planning board agreed to release lots for construction and sale in the meantime.

By early 2015 Maroney had built and sold 29 homes, when the city abruptly stopped issuing building and occupancy permits, claiming that water pressure was inadequate. Maroney followed the city's recommendations and installed a water line in the nearby public street, but the

city still withheld permits. Maroney sued Haverhill's planning, water and building departments in state Superior Court for breach of contract. The parties negotiated a settlement agreement, but the city would not sign unless Maroney first dismissed his lawsuit. Maroney refused to do so without a signed settlement agreement from the city.

Maroney's relationship with the city deteriorated. Although the fire department approved his development and water department tests showed adequate pressure, the city still withheld permits. The city also scrapped Maroney's original booster station plans, which the city's engineering consultant had approved, forcing Maroney to redesign the station. Maroney suspected that city officials were unfairly making him build the booster station to alleviate water pressure problems at another development.

Meanwhile, the city permitted other builders to construct 12 homes connected to the same water system, without requiring a booster station. Maroney sued the city, its mayor and its deputy water department director in federal court for violating his state and federal civil rights. Maroney claimed that they had conspired to deprive him of "property rights and constitutional rights to equal protection and due process."

The city and its officials hastily moved to dismiss the suit based solely on the

parties' pleadings. When judges are asked to dismiss lawsuits early, before parties can conduct discovery, they first determine whether the plaintiff's complaint asserts enough facts to support plausible claims. Judges weigh the allegations favorably toward plaintiffs in these situations, and assume that defendants' contradictory allegations are false. If the complaint asserts sufficient facts on its face, judges will allow the suit to continue, regardless of the defendant's arguments, to allow the parties to gather evidence needed to make their cases.

### Suit: City Abused Its Powers

Maroney's lawsuit accused the city of violating his right to equal protection under the law, because it withheld his permits while issuing permits to other builders using the same water system. He also asserted that the city abused its powers when it required him to build a booster station to address problems at another development, hindered his construction of the station and tried to force him to drop his superior court lawsuit against the city.

The federal court recognized Maroney's civil rights suit as a "class of one" equal protection claim. Plaintiffs may assert these claims when government officials deliberately treat them differently from others without a rational basis, with malicious intent to harm them. While acknowledging that Maroney would have difficulties prevailing on his civil rights claims, the court found that Maroney made sufficient allegations against the mayor and deputy director, because he asserted that they treated him differently from similarly situated builders. The court also noted that if Haverhill's mayor withheld permits to coerce Maroney to

drop his legitimate Superior Court lawsuit, the court could find sufficient malicious intent on the mayor's part to support Maroney's civil rights claim against him.

The federal court was less receptive to Maroney's claims against the city itself. The court noted that federal civil rights actions against municipalities require evidence that the misconduct resulted from official policies or customs. Maroney's

complaint did not cite any local policy or custom to support his claims against the city. Also, the Massachusetts civil rights statute does not allow lawsuits against municipalities. Therefore, the court dismissed Maroney's civil rights claims against the city.

The court did not pass judgment on whether Maroney's allegations were true, but it allowed Maroney to continue litigat-

ing his claims against Haverhill's mayor and deputy director as individuals. It remains to be seen whether Maroney will prevail in this suit, and whether he eventually completes his project. ◀

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