

# Massachusetts Courts Issue Key Decisions Concerning Zoning and Anti-SLAPP Law

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## **Massachusetts Supreme Judicial Court Makes it Harder to Dismiss Lawsuits by Utilizing the “Anti-SLAPP” Statute**

In *Blanchard v. Steward Carney Hospital*, SJC-12141 (May 23, 2017) (Slip Op.) the Massachusetts Supreme Judicial Court changed the framework used to determine whether a case should be dismissed under G.L. c. 231, § 59H, the anti-Strategic Lawsuit Against Public Participation (“anti-SLAPP”) statute. The Court held that when a party brings an anti-SLAPP motion to dismiss, the nonmoving party can defeat the motion by showing that its claim was “not brought primarily to chill” the moving party’s petitioning activity. Parties have successfully used the anti-SLAPP statute to quickly dismiss claims, and win attorney’s fees, in a variety of cases. This ruling will make it more difficult to succeed on a motion to dismiss brought under the anti-SLAPP statute.

### **Background**

#### **The Anti-SLAPP Statute**

The Massachusetts legislature adopted the anti-SLAPP statute in 1994 in order to combat “lawsuits brought primarily to chill the valid exercise of the constitutional rights of freedom of speech and petition for the redress of grievances.” *Duracraft Corp. v. Holmes Products Corp.*, 427 Mass. 156, 161 (1998). The statute was adopted, at least in part, in response to a case in which a developer sued several Massachusetts residents for signing a petition opposing a development in their town. *Id.* The case was eventually dismissed, but the residents incurred over \$30,000 in legal fees. *Id.*

In an effort to protect Massachusetts residents’ exercise of their rights to petition the government, the legislature adopted the anti-SLAPP statute. The statute allows a defendant to bring a special anti-SLAPP motion to dismiss claims that are based on the defendant’s “petitioning activity,” which is defined by the statute as activities undertaken “in connection with an issue under consideration by a legislative, executive, or judicial body, or any other governmental proceeding.” When an anti-SLAPP motion to dismiss is filed, the lawsuit is put on hold until the judge rules on the motion. If the court grants the motion, the moving party is entitled to an award of attorney’s fees. Previous court decisions have stated that the anti-SLAPP statute appeared to have been drafted and applied more broadly than the legislature originally intended.

Before the ruling in *Blanchard*, in order to prevail on an anti-SLAPP motion, the moving party had to show that the claim it sought to have dismissed was based solely on the moving party’s petitioning activity. If the moving party made this showing, the nonmoving party then had to prove

that the moving party's petitioning activity in question "lacked any reasonable factual support or any arguable basis in law" in order to survive the motion to dismiss.

### **The *Blanchard* Case**

In 2011, following reports of abuse at Steward Carney Hospital, the president of the hospital, William Walczak, fired all nine nurses who worked in the unit in which the abuse allegedly occurred. Walczak then issued statements, both to hospital employees and to the Boston Globe, arguably to the effect that the nurses had been fired in part for their culpability for the alleged abuses. The nurses brought a lawsuit against Walczak, the hospital, and related parties ("Hospital Defendants") for, among other things, defamation.

The Hospital Defendants brought a special motion to dismiss under the anti-SLAPP statute, claiming that some of the nurses' claims were based solely on the Hospital Defendants' protected petitioning activities. The trial court denied the motion, but an appeals court reversed the denial in part.

### **The Decision**

The Court held that the anti-SLAPP statute was so broad that it could potentially be used to dismiss meritorious lawsuits, and therefore infringe on the constitutional rights of parties whose potentially valid claims could be dismissed without proper proceedings on the merits. Therefore, the Court adopted a new framework for deciding anti-SLAPP motions. Under this framework, the moving party still must show that the claims it seeks to have dismissed are based solely on the moving party's petitioning activity. However, the nonmoving party may now defeat the motion by demonstrating that either: (i) the petitioning activity in question lacked basis in law or fact; **or** (ii) the nonmoving party's claims were not brought primarily to chill petitioning activity.

The Court explained that the nonmoving party can now defeat the motion by demonstrating that "its primary motivating goal in bringing its claim, viewed in its entirety, was 'not to interfere with and burden defendants'... petition rights, but to seek damages for the personal harm to [it] from [the] defendants' alleged...[legally transgressive] acts."

The Court determined that the Hospital Defendants' statements to the Boston Globe constituted protected petitioning activity because "they were issued in a manner that was likely to influence, or at the very least, reach" the governmental body that was determining whether to revoke the hospital's license to operate the unit at issue. However, the Court remanded the case to the lower court to give the nurses the opportunity, under the new framework, to defeat the motion to dismiss on this issue by demonstrating that their claim was not brought primarily to chill the Hospital Defendants' petitioning rights.

The Court also held that the Hospital Defendants' statements to hospital employees were not covered by the anti-SLAPP statute because they were not intended to reach or influence any governmental body, and therefore the claims based on these statements should not be dismissed.

### **The Takeaway**

The anti-SLAPP statute has stood for many years as a strong disincentive to real estate developers who consider counter-suing parties who object to and appeal from various development permits granted to the developer. Up to now, the anti-SLAPP jurisprudence indicated that the courts of the

Commonwealth looked harshly on such countersuits. *Blanchard* indicates a softening of this view where parties who are the target of an anti-SLAPP motion to dismiss can show their countersuit was brought to remedy a wrong (e.g. defamation) rather than as a knee-jerk effort to chill legitimate petitioning activities. However, before developers and similarly situated parties place too much confidence in this case, it must be noted that under the particular facts of the case, the parties who were the targets of the anti-SLAPP motion were nurses and not business actors. A motion to dismiss under the anti-SLAPP statute can still be a powerful tool to defeat tit-for-tat claims.

## **Land Court Upholds Rezoning Despite Claims of Illegal Spot Zoning and Illegal Contract Zoning**

In *Franson v. City of Woburn*, 2016 WL 4778392 (Mass. Land Ct. Sept. 14, 2016), residents in the neighborhoods surrounding a parcel that was rezoned to allow for the construction of townhouses challenged the rezoning as illegal spot and contract zoning and as arbitrary and capricious. The Woburn City Council approved the rezoning despite the Planning Board's failure to render a majority recommendation. The Land Court upheld the City Council's decision, holding that because the property was rezoned for reasons relating to legitimate public goals and to a zone that is consistent with neighboring zones, the City Council is entitled to deference.

### **Background**

Melanson Development Group, Inc. ("Melanson") sought to construct 18 townhouses on a parcel of land in Woburn that was zoned as Single Family Residential. The parcel is located on Cambridge Road, a main artery in the city, and is in close proximity to a shopping plaza, conservation land, and single family homes. Melanson and Eileen C. Marsan, the current owner of the parcel, filed a petition to rezone the parcel from Single Family Residential to Residential Townhouse and Garden Apartment. The Woburn Planning Board voted 3-3-1 on the rezoning, with one member abstaining, and filed a memorandum with the City Council setting forth each voting member's rationale. The City Council's Ordinances, Charter and Rules Committee issued a recommendation that the rezoning not pass. Ultimately, the City Council voted 6-3 to approve the rezoning and the rezoning became effective when the Mayor did not act upon the rezoning within ten days of its presentation by the City Council. Neighbors challenged the City Council's action in Land Court, and the parties filed cross-motions for summary judgment.

### **The Decision**

The Court found that the plaintiffs, as neighbors, live sufficiently near the parcel that an inference could be drawn in their favor that the addition of 18 townhouses would have a direct effect on them, thereby establishing their standing to challenge the rezoning under G.L. c. 240, § 14A. This is a less rigorous standard than the "person aggrieved" standard arising under G.L. c. 40A, § 17, as the "person aggrieved" standard applies to plaintiffs challenging a permitting decision, but does not apply to plaintiffs who challenge the validity of a zoning regulation or amendment thereto.

The question of whether a rezoning constitutes illegal spot zoning is determined simply by asking whether the rezoning conflicts with the Zoning Act, G.L. c. 40A, and not by examining which parcel was singled out or even by the effect of the rezoning on the parcel. The Court determined that the

plaintiffs had failed to meet the “heavy burden” of establishing a conflict with the Zoning Act that would constitute spot zoning. Based on the hearings and opinions presented, the Court found that the City Council reasonably concluded that the passage of the rezoning would further the City’s long-standing goals of providing additional housing inventory and public access to a historic site. The Court also noted that the City Council could have reasonably determined that it was appropriate to rezone the parcel because it is surrounded by multiple different zoning districts and spot zoning has been found to be less likely at the border of districts.

In assessing whether a rezoning constitutes contract zoning, the Court must ask two questions: (1) was the action contrary to the best interest of the city and therefore offensive to general public policy?; and (2) did the rezoning involve extraneous consideration which could impeach the enacting vote as a decision solely in respect of rezoning? In determining that the rezoning was not contract zoning, the Court found that the rezoning would result in benefits to the City and that the improvements offered by the developer were substantially related to the proposed development, rather than being extraneous consideration meant to achieve the desired rezoning.

Finally, the Court found that the City Council had not acted in an arbitrary and capricious manner, despite the Planning Board’s failure to recommend the rezoning. The Court noted that it is well-established that the decision regarding sensible zoning is for the Planning Board to recommend and for the City Council to make. The fact that the City Council held public hearings and reviewed recommendations and reports from various parties before approving the rezoning and that the City Council acted in the interests of its citizens were key in the Court’s finding.

### **The Takeaway**

Although developers should always be sensitive to allegations of illegal spot and contract zoning when seeking necessary rezoning for projects, plaintiffs face a heavy burden in proving such a case. In order to prove that rezoning was illegal spot zoning, a plaintiff must prove not just that a parcel was treated differently from others, but that the rezoning itself conflicts with the Zoning Act. In order to prove that rezoning was illegal contract zoning, a plaintiff must prove that the action was contrary to the best interest of the city and that extraneous consideration was offered that interfered with the City Council’s ability to vote in the best interests of the city. While such cases can be proven given the right set of facts, courts will generally give deference to the City Council’s decision where it was not made in an arbitrary and capricious manner.