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## State ruling on 40B builds interest from Sherborn and Dover

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"I think what it does is it restores the balance of power to where it should be and says that these concerns have to be addressed under 40B," said attorney Daniel Hill. "They can't be ignored. There have been too many cases where legitimate local concerns have been swept under the rug."

Hill represented a Stow resident who went to court to oppose a wastewater bylaw waiver the town zoning board granted to a proposed senior housing project being built under Chapter 40B, the state's affordable housing law. The court found that although the design of the housing development's septic system complied with state environmental regulations, it would cause unsafe nitrogen levels in neighboring private drinking wells.



Landscaping plans for the Fields at Sherborn project.

The Supreme Judicial Court upheld the ruling on appeal on Dec. 22.

"When faced with evidence that one or more adjacent private wells will have elevated nitrogen levels and there is no public water source in the area and no proposal to provide the abutter with clean water, it is unreasonable to conclude that the local need for affordable housing outweighs the health concerns of existing abutters," Judge Kenneth Salinger wrote in the slip opinion.

As a result, the zoning board's decision to waive the town wastewater discharge bylaw was improper, and the project's building permit was revoked.

"This sends a message to developers across the state that they should pay attention to these issues and maybe shouldn't propose multifamily, high-density projects in environmentally sensitive areas," Hill said.

Sherborn is paying close attention to the ruling, as it is dealing with a 40B proposal, Fields at Sherborn, near the Holliston line. Since the proposal began making its way through town boards last summer, residents, especially the Sherborn Citizens Action Committee, have made their opposition known. They have cited the proposal, which would build 32 units, as being too dense, too close to wetlands and with not enough safeguards to ensure safe drinking water.

Information on the project may be found at <http://sherbornma.org/Pages/The%20Fields%20at%20Sherborn/>

Dover has no 40B proposals on the table — yet. In 2015, the town decided to purchase the property at 46 Springdale Ave.; had the purchase not been approved, the owner of the property, Jim Snyder, would have sold the site to a developer for a 40B project.

There is concern among residents that should more properties come up for sale, the town may not be able to come up with the purchase price, and these properties could end up as 40B projects.

The Board of Selectmen has sent this issue along to the Long Range Planning Committee. Also, the town is considering the re-establishment of a housing partnership.

Attorney Brian Levey, a principal at Beveridge and Diamond, said he doesn't expect the SJC's recent ruling to have many far-reaching impacts on Chapter 40B projects.

"It's a circumstance that has not come up before, where there were facts on record that compliance with state standards was insufficient to protect the groundwater and the neighbors' wells," Levey said. "As far as I know, it hasn't come up in a 40B case that had been litigated."

Levey, who specializes in land use law, carefully observed the Stow case, but wasn't directly involved. He has represented many 40B developers throughout Massachusetts.

He speculated that some opponents of 40B proposals may now scrutinize the state regulations to look for inadequacies they could highlight to oppose new developments on environmental grounds.

"In terms of case law, I don't see this as changing the law," Levey said. "It's just a fact circumstance that hasn't come up before."

In the Stow case, the judge described the unique circumstances.

"We conclude that the plaintiff has identified an important local health issue, maintaining clean groundwater servicing local private wells, that is not adequately protected by compliance with applicable State standards," Salinger wrote in the slip opinion.

Chapter 40B has had a long, sometimes contentious, history in Massachusetts. Passed in 1969, the statute allows developers to effectively override certain municipal zoning bylaws as long as at least 25 percent of the proposed units are affordably priced and reserved for families making less than 80 percent of the

community's median income.

Proponents of the law say it's led to more than 34,000 units of much-needed affordable housing. Opponents of 40B say it leads to high-density developments in areas unable to support that type of project and hinders a community's ability to control its growth.

While the SJC ruling may not be a major game-changer for affordable housing laws, Hill calls it a significant win for environmental protection. Some residents in Sherborn are currently using a similar technique to oppose a 40B project there.

"It's been awhile since a court has taken the side of the environment in this kind of case," Hill said. "It's a big victory for those of us on the side of environmental protection."

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