

Docket

Marengi v. 6 Forest Road LLC, Massachusetts Supreme Judicial Court, No. 13316

NEW ENGLAND LEGAL FOUNDATION DEFENDS ANTI-NIMBY PROVISION OF AFFORDABLE HOUSING LAW

BOSTON – The New England Legal Foundation (NELF – www.newenglandlegal.org) has filed an amicus curiae brief in the Massachusetts Supreme Judicial Court in support of the Legislature’s efforts to strengthen the state’s economy by increasing the amount of affordable housing available to the people who live and work here.

In 2020 the Legislature passed an omnibus act aimed at strengthening the state’s economy by, in part, improving the conditions of its workforce. Among the Legislature’s foremost concerns was to facilitate new construction of affordable housing. Under one of the new laws a judge is now permitted to require a bond of up to \$50,000 from anyone appealing the approval of “a special permit, variance, or site plan.” The goal of the law is obviously to discourage meritless nuisance litigation undertaken to delay or derail housing construction. In *Marengi v. 6 Forest Road LLC* the Supreme Judicial Court has now been asked to decide whether the law applies to appeals from the approval of a comprehensive permit. The question is a crucial one because comprehensive permits are one of the most important ways in which the Legislature has sought to streamline the construction of affordable housing. Comprehensive permits are not specifically listed in the bond statute, however.

In response to the Court’s invitation for outside briefing, NELF has filed a brief setting out the reasons why comprehensive permits should be considered within the scope of the new law. After recounting some of the history of the housing problem in Massachusetts, NELF explains that, as the name suggests, comprehensive permits are “containers.” What they contain are all the various individual municipal approvals required for a housing development project to go forward in a town. The question then is whether a comprehensive permit contains approval of “a special permit, variance, or site plan.” NELF argues that regulations legally require site plan approval for all affordable housing projects as part of the comprehensive permitting process. “In our brief we also point out that the plaintiffs, in their own appeal of a comprehensive permit, specifically object to the site plan approval,” said Staff Attorney John Pagliaro, who authored the brief.

“The Legislature recognized the importance of encouraging more affordable housing when it enacted the bond requirement to block NIMBY litigation,” said NELF President Dan Winslow, who added, “The New England Legal Foundation strongly favors development rights for more housing to result in lower costs.”

The Supreme Judicial Court hears the case in early October, and a decision is expected in the following months.