



Englander, Leggett & Chicoine, P.C.

44 School Street, Suite 800 ■ Boston, MA 02108
Telephone (617) 723-7440 ■ Facsimile (617) 723-8849

Sienna Crawford
scrawford@elcpc.com

May 24, 2011

By First Class Mail

Mary C. McGee, Esq
37 Friend Street, Box 311
Lynn, MA 01903

Robert L. Quinan Jr.
Assistant Attorney General
Office of the Attorney General
One Ashburton Place
Boston, MA 02108

RE: *Mahajan et al. v. DEP and BRA*
Suffolk Superior Court No. 10-0802-H

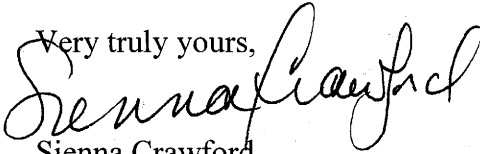
Dear Counsel:

Pursuant to Superior Court Rule 9A, please find:

**SUPPLEMENTAL FILING TO DEFENDANT BOSTON REDEVELOPMENT
AUTHORITY'S OPPOSITION TO PLAINTIFFS' MOTION FOR JUDGMENT
ON THE PLEADINGS AND CROSS MOTION FOR JUDGMENT ON THE
PLEADINGS.**

Note that any opposition you may wish to file must be delivered to this office on or
before **Monday, June 6, 2011**, at which time the BRA will file this motion with the Court.

Thank you for your attention to this matter.

Very truly yours,

Sienna Crawford

Plaintiffs in our case lack standing to maintain an action in the nature of mandamus because the “public right” doctrine does not apply to an ordinary land use controversy, and Plaintiffs do not allege to have personally suffered legal harm.¹ In *Gettens*, the Court discussed the importance of the issue of standing in mandamus actions and the “established principle” that those seeking such relief either suffer or be in danger of suffering a legal harm. *Id.* The Court explained that Mr. Gettens did not allege that he was or would be personally harmed by the building inspector’s approval of the occupancy permit. *Id.* Mr. Gettens argued that he had standing to seek relief in the nature of mandamus by invoking the “public right” doctrine. *Id.* The Appeals Court wisely disagreed, holding as follows:

Whatever the continued viability of that doctrine in other contexts, we disagree with the plaintiff’s contention that – in an ordinary land use controversy such as is present here – the doctrine relieves him of having to demonstrate a specific interest in the outcome in order to supply him standing. *See Perella v. Massachusetts Turnpike Authy.*, 55 Mass.App.Ct. 537, 539-540, 772 N.E.2d 70 (2002), and cases cited.
Gettens v. Building Inspector of Sterling, 2011 WL 488727 *1.

The opinion also noted that Mr. Gettens lived two miles from 55 Lakeshore Drive. *Id.* Similarly, not one of the Plaintiffs in our case lives close enough to the seaward end of Long Wharf to see or hear the proposed restaurant from where they live.

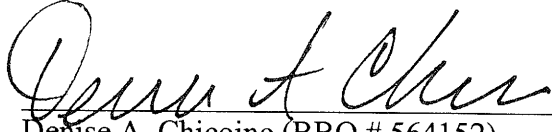
For the foregoing reasons, and those previously set forth in the BRA’s motions, oppositions, cross-motions, and during oral arguments, Defendant Boston Redevelopment Authority respectfully requests that this Court deny Plaintiffs’ Motion for Judgment on the Pleadings and allow the BRA’s Cross-Motion for Judgment on the Pleadings.

¹ Plaintiffs’ Memorandum in Opposition to Defendant Boston Redevelopment Authority’s Motion to Dismiss, p. 4. (“It is true that the plaintiffs have not alleged in their complaint that they are abutters or that they are likely to suffer an injury which is personal to any of them individually.”).

Respectfully submitted,

Boston Redevelopment Authority
By its counsel

May 24, 2011

A handwritten signature in cursive script, appearing to read "Denise A. Chicoine", written over a horizontal line.

Denise A. Chicoine (BBO # 564152)
Edward S. Englander (BBO #154540)
ENGLANDER, LEGGETT & CHICOINE, P.C.
44 School Street, Suite 800
Boston, MA 02108
Tel. (617) 723-7440

CERTIFICATE OF SERVICE

I, Denise A. Chicoine, hereby certify that I served the foregoing:

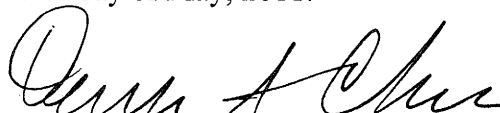
Supplemental Filing to Defendant Boston Redevelopment Authority's Opposition to Plaintiffs' Motion for Judgment on the Pleadings and Cross Motion for Judgment on the Pleadings.

on counsel of record by mailing a true copy of same to the following:

Robert L. Quinan Jr.
Assistant Attorney General
Office of the Attorney General
One Ashburton Place
Boston, MA 02108

Mary C. McGee, Esq
37 Friend Street, Box 311
Lynn, MA 01903

by first class mail, postage prepaid, on this twenty-fourth day of May, 2011.


Denise A. Chicoine, Esq.

Unpublished Disposition

941 N.E.2d 724

NOTE: THIS OPINION WILL NOT
APPEAR IN A PRINTED VOLUME.
THE DISPOSITION WILL APPEAR IN
A REPORTER TABLE.

**This decision was reviewed by
West editorial staff and not
assigned editorial enhancements.**

NOTICE: Decisions issued by the
Appeals Court pursuant to its rule 1:28
are primarily addressed to the parties
and, therefore, may not fully address the
facts of the case or the panel's decisional
rationale. Moreover, rule 1:28 decisions
are not circulated to the entire court
and, therefore, represent only the views
of the panel that decided the case. A
summary decision pursuant to rule 1:28,
issued after February 25, 2008, may be
cited for its persuasive value but,
because of the limitations noted above,
not as binding precedent.
Appeals Court of Massachusetts.

James F. GETTENS

v.

BUILDING INSPECTOR OF
STERLING.

No. 10-P-291. February 11, 2011.

Opinion

By the Court (McHUGH, MEADE &
MILKEY, JJ.).

MEMORANDUM AND ORDER PURSUANT TO RULE 1:28

*1 This case involves a controversy over the
demolition and reconstruction of a house at
55 Lakeshore Drive in Sterling owned by
Edward and Edith McNamara. The plaintiff
opposes the McNamaras' development
efforts, and he brought an action in the
nature of mandamus seeking enforcement by
the local building inspector. A Superior
Court judge dismissed the complaint for lack
of standing. On appeal, the plaintiff alleges
that the first count of the amended complaint
should not have been dismissed. That count
alleged that the defendant building inspector
had a nondiscretionary duty to deny the
owners of 55 Lakeshore Drive an occupancy
permit because of their alleged
noncompliance with a special permit issued
by the local zoning board of appeals. We
affirm.

In mandamus actions,

“[t]he question of standing is one of
critical significance. ‘From an early day it
has been an established principle in this
Commonwealth that only persons who
have themselves suffered, or who are in
danger of suffering, legal harm can
compel the courts to assume the difficult
and delicate duty of passing upon the
validity of the acts of a coordinate branch
of the government.’ “

*Tax Equity Alliance for Mass. v.
Commissioner of Rev.*, 423 Mass. 708, 715,
672 N.E.2d 504 (1996), quoting from *Doe v.
The Governor*, 381 Mass. 702, 704, 412
N.E.2d 325 (1980). The plaintiff has not

alleged that he has in any way been harmed, or will in any way be harmed, by the building inspector's actions (or inaction) with regard to 55 Lakeshore Drive.¹ Nor has he alleged that he fits within the narrow class of parties in interest (see G.L. c. 40A, § 11) who are entitled to presumptive standing. Instead, the plaintiff asserts that he need not demonstrate any specific interest in this controversy but can instead rely solely on the so-called "public right" doctrine. See *Bancroft v. Building Commr. of Boston*, 257 Mass. 83, 84 (1926). Whatever the continued viability of that doctrine in other contexts, we disagree with the plaintiff's contention that in an ordinary land use

controversy such as is present here—the doctrine relieves him of having to demonstrate a specific interest in the outcome in order to supply him standing. See *Perella v. Massachusetts Turnpike Authy.*, 55 Mass.App.Ct. 537, 539-540, 772 N.E.2d 70 (2002), and cases cited.²

Judgment affirmed.

Parallel Citations

941 N.E.2d 724 (Table), 2011 WL 488727 (Mass.App.Ct.)

Footnotes

- 1 The building inspector alleges, albeit without citation to the record, that the plaintiff lives some two miles from the site.
- 2 For these purposes, it matters not whether the first count is characterized as seeking enforcement of the zoning by-law or enforcement of the building code.

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