

CHESTO MEANS BUSINESS

SJC ruling is a win for development industry

State's highest court rules that plaintiffs need to prove harm to appeal land-use decisions

By [Jon Chesto](#) Globe Staff, Updated March 6, 2020, 7:31 p.m.



Massachusetts Supreme Judicial Court inside the John Adams Courthouse. LANE TURNER/GLOBE STAFF

After two years of trying, Governor Charlie Baker made yet [another valiant effort](#) to push his housing legislation forward this week.

But the state Supreme Judicial Court might have accomplished more for housing production in just one day.

The state's highest court ruled on Friday that plaintiffs in land-use cases essentially need to prove they would suffer some kind of demonstrable harm in order to bring a legal challenge to a construction project near them. It didn't take long for the judges to make up their minds: They heard the arguments on Thursday, and by Friday afternoon, their decision had been e-mailed to the various attorneys in the case.

This might set a new land-speed record: The deliberative SJC typically takes a few months, from hearing a case to issuing a ruling. This time, the judges resolved the case before they even had time to write up a formal explanation of their reasoning.

The case, [Murchison vs. Sherborn](#), had drawn widespread interest within development and home-building circles. The reason: Industry groups said a [state Appeals Court ruling](#) in September in the case had the potential to generate a flood of lawsuits and delay numerous construction projects in communities across the state. Three groups filed friend-of-court briefs against Murchison, including [NAIOP Massachusetts](#) and the Home Builders & Remodelers Association of Massachusetts.

At issue is a proposed single-family home for a 3-acre parcel on Lake Street, in a wooded, tranquil section of Sherborn where 3 acres is the minimum lot size.

All this fuss over one house? Yes. But the potential impact could have been so much bigger than that.

Merriann Panarella and David Erichsen sought to build a house on this lot, across the street from where Robert and Alison Murchison live. Those plans ran into a snag when the Murchisons sued to overturn an approval by Sherborn's Zoning Board of Appeals, taking issue with how the panel applied the town's building lot width requirement to the project.

A Land Court judge decided the Murchisons didn't adequately prove they would be harmed by this project, and thus had no standing to sue. The Murchisons appealed, successfully. The Appeals Court basically said this: All they need for standing is that they live near the site in question, and that the project would represent an increase in density. From the perspective of someone living in Boston, a 3-acre lot with one house might not seem that dense at all. But to the Murchisons, this was a big change from the open space that exists there today.

The Murchisons' lawyer, James Murphy, argued in court on Thursday that neighbors to a project suffer "density-related harm" in any case involving an increase in density. The construction of the house reduces his clients' privacy, he told the judges, and removes open space. It's more than his clients "bargained for," Murphy said, to watch someone "squeeze" a house onto the site.

But several judges expressed skepticism on Thursday, with one noting the new house would be roughly an "NFL kickoff" away from the Murchisons' home.

By Friday, the verdict had been rendered: Let the house go up.

Tamara Small, chief executive of NAIOP Massachusetts, said the Appeals Court ruling threatened countless development projects. She feared a wave of litigation could have been unleashed if the SJC allowed that previous decision to stand. Lawsuits can tie up projects for two years or more, she said, and drive up costs to the point that some become infeasible.

In its friend-of-court brief, the home builders association highlighted the state's housing shortage, and the high home prices here. (The statewide median recently hit \$400,000.) Without the SJC interceding, the group argued, the "not in my backyard contingent would be armed with a powerful tool to stop development."

Dan Dain, representing the two defendants who want to build the house, said he was totally stunned by the SJC's quick turnaround. The speed of the decision, he said, is

noteworthy. At the very least, it might indicate that the court system shouldn't be used to second guess each and every land-use decision at the local level.

We won't know for sure what the judges were thinking until the court releases its reasoning in writing. But developers can breathe just a bit easier today, now that one potential barrier to construction has been taken away.

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