



## **JONATHAN M. SILVERSTEIN**

**Shareholder**

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**Practice Areas:** General Municipal, Land Use, Litigation

### **Experience**

Attorney Jonathan Silverstein has more than 20 years of experience counseling clients on general municipal law, including municipal finance, conflict of interest, public records and Open Meeting Law, as well as licensing, land use, real estate, zoning, contracts and permitting.

Jonathan has represented clients in a broad range of cases, including land use, civil rights, tort, contract, education, employment, and environmental, before all levels of the Massachusetts and Rhode Island trial courts, the United States District Court (Districts of Massachusetts and Rhode Island), the Massachusetts Appeals Court and Supreme Judicial Court, the Rhode Island Supreme Court, and the United States Court of Appeals for the First Circuit.

Jonathan is also the chair of the firm's active Expanded Gaming and Casino practice. He has represented more than two dozen host and surrounding communities across Massachusetts and New York in negotiating agreements with gaming facility developers as well as ancillary matters, such as establishment of redevelopment authorities, negotiation of urban redevelopment agreements, and large-scale rezoning efforts.

### **Representative Litigation Matters**

#### **Civil Rights/Tort**

- Freeman v. Town of Hudson, 714 F.3d 29 (1<sup>st</sup> Cir. 2013). Federal Court of Appeals upheld dismissal of federal civil rights claims brought by developer against members of Town's Police Department and Conservation Commission, claiming that his development activities were wrongfully scrutinized/regulated and that he was falsely arrested and criminally charged as a result of plaintiff's dispute with his neighbor, who is also a member of the Town's police department.
- Grossi Development LLC v. Town of Rehoboth, U.S.D.C. 1:10-cv-10728-RWZ (Aug. 25, 2011) (Zobel, J.), affirmed 1<sup>st</sup> Cir. No. 2011-2365 (July 9, 2012). Federal District Court dismissed equal protection and due process claims by Chapter 40B developer, who claimed that Town's Zoning Board of Appeals and Conservation Commission had interfered with ability to permit and construct residential housing development. The District Court's judgment was affirmed by a panel of the United States Court of Appeals.

- Rocheleau v. Town of Millbury, 115 F.Supp. 173 (D.Mass. 2000). Federal District Court awarded summary judgment to the Town and Town officials on various civil rights and tort claims against the Town and police officers, arising out of a pretrial detainee's alleged injuries while in a Town lock-up facility.
- Marinelli v. Stoughton Board of Selectmen, NOCV2008-00121 (2008). Superior Court dismissed equal protection and due process claims arising out of the Board of Selectmen's vote to discontinue maintenance of a private road. Plaintiff claimed he was treated differently from others similarly situated and suffered damages as a result of the Board's decision. The Court also rejected the plaintiff's request for a review of the Board's vote to discontinue maintenance.

## **Comprehensive Permits/Enforcement**

- Town of Boxborough v. Boxborough Meadows, LLC. In the settlement of the first-ever action by a municipality to enforce the profit limitation imposed upon recipients of comprehensive permits for affordable housing projects under G.L.c.40B, the developer agreed to pay \$1.2 million to the Town, to be used for affordable housing purposes.

## **Constitutional/Licensing**

- DHL Associates v. Town of Tyngsborough, 64 Mass.App.Ct. 254 (2005). In a case of first impression, the Appeals Court held that Article 16 of the Massachusetts Declaration of Rights does not afford broader protections to adult entertainment than the First Amendment.

## **Employment**

- Jackson v. Town of Belchertown, 84 Mass.App.Ct. 1107 (2013). Appeals Court upheld dismissal of wrongful termination claim by former police lieutenant, who claimed his position was eliminated in retaliation for his participation in the investigation of a town official's son.
- City of New Bedford v. MCAD, 440 Mass. 450 (2003). SJC reversed MCAD's decision to affirm arbitration award in favor of police officer, who claimed that decision to remove him from City's SWAT teams was based upon unlawful handicap discrimination. In case of first impression, SJC adopted federal courts' definition of "handicap" in ADA cases for purposes of claims under G.L. c.151B.

## **Education**

- Doe v. Superintendent of Schools of Stoughton, 437 Mass. 1 (2002). In the first case to interpret student-discipline provisions of G.L. c.71, §37H½ part of the Education Reform Act, the SJC upheld the decision of the Town's Superintendent of Schools to suspend a student charged with a felony that took place off school premises and during the summer break. This decision reaffirms the broad discretion of school officials with respect to student discipline and safety.

## **Environmental**

- Town of Sturbridge v. Mobil Oil Company. \$1.6 million settlement in groundwater contamination action, pursuant to G.L. c.21E.

## **Municipal/Presentment**

- Antonio v. City of Peabody, 51 Mass.App.Ct. 655 (2001), MLW June 4, 2001 (opinion digest). Appeals Court reversed denial of City's motion for summary judgment on grounds of inadequate presentment and ordered that judgment enter for City.

## **Municipal Finance**

- Iacobucci v. Town of Amesbury, 77 Mass.App.Ct. 1109 (1:28 Decision), further appellate review denied, 458 Mass. 1104 (2010). Appeals Court held that debt authorization for capital expenditure (library renovation project) was not subject to referendum process under municipal charter. Court also held that plaintiffs' Open Meeting Law claim and mandamus claim (seeking enforcement of various charter provisions) were properly dismissed.

## **Open Meeting Law**

- Paicopolis v. Dartmouth School Committee, 72 Mass.App.Ct. 1117, further appellate review denied, 452 Mass. 1109 (2008). Appeals Court rejected a claim that the School Committee held improper executive sessions and also rejected a claim that the School Committee breached obligation of good faith and fair dealing with the public by considering various employment and contract matters in executive session.

## **Junk Yard/Contempt**

- City of Woburn v. Alfred V. Fraumeni, Jr., Inc., MICV1998-1437 and MICV2001-1231 (2006). After trial, Superior Court entered a Contempt Judgment against owner of property being used for storage of approximately 160 junk and disused vehicles. Court ordered repayment of City's costs and attorney fees and provided for appointment of receiver (at property owner's expense) if all vehicles, debris and equipment were not removed by set deadline.

## **Real Estate (Registered Land)**

- Town of Sandwich v. Panciocco, 48 Mass.App.Ct. 556, further appellate review denied, 431 Mass. 1105 (2000). Appeals Court affirmed summary judgment for plaintiff Town in right-of-way case involving inconsistencies between confirmation plan of defendant's property and registration plan of plaintiff's property.

## **Real Estate (Right of Reverter)**

- Faneuil Investors Group v. Board of Selectmen of Dennis, 458 Mass. 1 (2010). Supreme Judicial Court held that Town could enforce right of reverter to void sale of municipal land to housing authority, based upon housing authority's failure to obtain permission of selectmen prior to granting mortgage on property. Mortgagee/Bank claimed that mortgage was not "conveyance" sufficient to trigger reverter clause.

## **Sewer Connection**

- Lemansky v. Charlton Water & Sewer Commission, WOCV2004-01107 (2005). Summary Judgment rejecting the claim of property owners that they were improperly denied connections to municipal sewer for a large-scale development based upon a narrow strip of land connecting the development site to a public way in which municipal sewer line was located. Court also upheld sewer connection moratorium as valid exercise of Commission's authority.

## **Subdivision Control**

- Wine v. Planning Board of Newburyport, 74 Mass.App.Ct. 521 (2009). Appeals Court upheld denial of definitive subdivision approval and rejected property owners' claims that: (1) compliance with current subdivision rules and regulations was not required due to prior approval of subdivision plan for the same property; and (2) that the Planning Board's denial

of a waiver requirement for centerline offset was motivated by an improper attempt to prevent further subdivision of the property in question.

## **Subdivision Control/Damages**

- Arello v. Town of Auburn, WOCV2008-02542 (2009). Superior Court dismissed claims for damages and to remove cloud on title, arising from filing of conditions of subdivision approval approximately fifteen years after the original decision of Planning Board and seven years after the plaintiff purchased subject property.

## **Zoning**

- Barkan v. Town of Truro, Land Court No. 17 Misc. 000371 (2017) and Zehnder v. Town of Truro, Land Court No. 12 Misc.459506 (2017). In this highly publicized zoning enforcement matter, Jonathan secured a settlement for the Town resulting in payments totaling \$3 Million and successfully defended the settlement in subsequent litigation initiated by a group of abutters.
- Palitz v. Tisbury Zoning Board of Appeals, 470 Mass. 795 (2015). In a case of first impression, the Supreme Judicial Court held that endorsement of an Approval Not Required (ANR) plan under the so-called “existing structures exemption” of the Subdivision Control Law does not protect the resultant lots from zoning enforcement, where the division of land results in new zoning nonconformities.
- Kennard v. Zoning Board of Appeals of Eastham, 52 Mass.App.Ct. 1005 (2001), MLW July 23, 2001 (opinion digest). Affirming judgment after trial upholding a decision of the Zoning Board of Appeals to deny plaintiff a special permit for the enlargement of a preexisting nonconforming structure and rejecting plaintiff’s argument that denial of a special permit for “de minimis” enlargement was abuse of discretion.
- Perotti-Cyrus v. Town of Sandwich, BACV2004-0767 (2009). After trial, Superior Court upheld a zoning enforcement order against the use of a cottage that was unlawfully sold into separate ownership from remaining cottages in a former seasonal cottage colony.

## **Prior Experience**

Rhode Island Supreme Court

*Law Clerk*, Justice Victoria Lederberg (1995-1996)

## **Honors & Awards**

- Named a “Super Lawyer” in Municipal Law in the 2015-2017 editions of *Super Lawyers Magazine*
- Named a “Rising Star” in Municipal Law in the 2010 edition of *Super Lawyers Magazine*
- Named one of five “Up and Coming Lawyers” by *Massachusetts Lawyers Weekly* in 2004

## **Memberships & Affiliations**

- Massachusetts Bar Association, Civil Litigation Division
- Steering Committee Member, Municipal Coalition for Affordable Housing (MCAH)

## Bar & Court Admissions

- Massachusetts Bar
- Rhode Island Bar
- U.S. District Court (Mass.)
- U.S. District Court (Rhode Island)
- U.S. Court of Appeals for the First Circuit
- Supreme Court of the United States

## Education

Boston College Law School

Juris Doctor, 1995

Editor, *Environmental Affairs Law Review*

Brandeis University

Bachelor of Arts, *cum laude*, with High Honors, 1992

## Recent Presentations

- Cannabis & Host Communities: What You Need to Know, Cannabis Society and Prince Lobel Tye LLP, March 2018
- The Zoning Act and Municipal Control of Land Use, Middlesex County Town and City Clerks Association Annual Meeting, December 2017
- Introduction to Subdivision Control, Citizen Planner Training Collaborative, Brewster, MA, November, 2017
- Zoning Exemptions, Citizen Planner Training Collaborative Annual Meeting, March 2017
- Massachusetts Case Study—Host and Surrounding Community Agreements, National Conference of Legislators from Gaming States Annual Meeting, July 2016
- Zoning Code Administration and Enforcement, Eastern States Building Officials Federation Annual Conference, Portsmouth, NH (April 2016).
- Exempt Uses Under the Massachusetts Zoning Act, Massachusetts Building Commissioners and Inspectors Association (July 2015).
- Hot Topics in Zoning Law, Boston Bar Association (May 2015)
- Casino Gaming, State Policy and Local Planning, Massachusetts Association of Planning Directors (MAPD), Westminster, MA (Jan. 2014).
- Surrounding Communities Under the Massachusetts Gaming Act, Massachusetts Continuing Legal Education (MCLE), Boston, MA (Dec. 2013).
- Massachusetts Gaming Law Update 2012, Massachusetts Continuing Legal Education (MCLE), Boston, MA (Dec. 2012).
- Casino Coming to Town, Planning at a Crossroads, presented at the annual conference of the Southern New England American Planning Association (SNEAPA), Hartford, CT (Sept. 2012).
- There's a New Game in Town—What Municipalities Need to Know About the Casino Legislation, Webinar (Jan. 2012), available for viewing at [www.k-plaw.com](http://www.k-plaw.com).

## **Publications**

- “Procurement Opportunities in the Gaming Sector: A Good Bet for those Who Play By the Rules,” *Boston Bar Journal*, Summer 2015
- Comment: “Taking Wetlands to the Bank: The Role of Wetland Mitigation Banking in a Comprehensive Approach to Wetland Protection,” *Boston College Environmental Affairs Law Review*, Volume 22, Number 1
- Author, “Lucas One Year Later: Merely a Footnote to the Regulatory Takings Doctrine,” *National Environmental Enforcement Journal*