

## COURT FINDS NO RIGHT TO SUE MUNICIPALITY

The Vermont Supreme Court has ruled that when a municipality fails to enforce an ordinance that was adopted for the purpose of protecting the general public, an individual who suffers damages as a result of the non-enforcement cannot bring a legal action against the municipality. *Lunenburg Fire Dist. No. 2 v. Maciejko*, Vt. Entry Order No. 98- 385 (Aug. 21, 2000).

The Maciejkos suffered property damage when water and sewage backed up in their basement as a result of a blockage in the sewage system operated by the Fire District. The case initially went to Small Claims Court which held the Fire District liable for damages on the theory that it had a duty to maintain the sewer system and that it breached that duty, resulting in damage to the plaintiff.

The Superior Court heard the case and ruled that there was insufficient evidence to prove that the lack of a maintenance plan was the direct or proximate cause of the damage. However, the Superior Court held that the Fire District was still liable for damages because it had failed to enforce its own sewage ordinance. The ordinance required that the owner (landlord in this case) keep a cap in place over the drain so that it could not back up. The landlord had been warned to do so but had not complied and the District had taken no further steps to require him to comply. Thus, the Court said, if the District had enforced its ordinance, the backup into the basement would not have occurred, even if a blockage in the sewer occurred.

The Supreme Court considered the case and found that the plaintiffs had no basis on which to bring this action. First, the common law provides no basis for a private citizen to sue a municipality for failure to enforce its ordinances. Second, the pertinent statutes in 24 V.S.A. Chapter 101 give no indication that the Legislature intended to create a basis for such action. (*Editor's note: Certain statutes do grant citizens the ability to compel a municipality to enforce bylaws. For example, a zoning administrator who fails to enforce a zoning bylaw may be brought to court by a citizen and be ordered by the court to enforce the law.*) Third, the ordinance itself specifically stated that its purpose was "the protection of the health and safety of Fire District No. 2 and of the general public..." *Id.* at 4 (internal quotes omitted). In other words, it did not create a duty to individuals or a mechanism by which individuals could bring such an action.

This decision is consistent with prior cases. For example, there was no private action allowed based on failure to enforce a housing code which was adopted for the good of the general public. *Corbin v. Buchanan*, 163 Vt. 141 (1994).

One lesson from this case is to draft ordinances carefully so that they do not create some liability for the municipality. However, an equally important lesson is that regular maintenance and effective enforcement of the ordinance might have prevented the blockage and subsequent, costly lawsuit.