IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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JOHN REGET,

Plaintiff,

OPINION AND ORDER

v.

05-C-238-C

CITY OF LA CROSSE, JOHN MEDINGER, LARRY KIRCH, RON OLSTEN, PATRICK HOULIHAN, PAT CAFFERTY, and CITIES & VILLAGES MUTUAL INSURANCE COMPANY,

Defendants.

- -

In this civil action for injunctive and monetary relief brought under 42 U.S.C. § 1983, plaintiff John Reget contends that various officials and agencies in the City of La Crosse, Wisconsin, discriminated against him in an attempt to close down his auto body business, in violation of his right to equal protection under the Fourteenth Amendment. Jurisdiction is present. 28 U.S.C. § 1331.

Plaintiff contends that defendants violated his right to equal protection when they (1) cited plaintiff for violating an ordinance governing the storage of junked vehicles and

required him to build a fence around his property; (2) required plaintiff to enter into an agreement with defendant La Crosse in January 1997 regarding zoning matters; (3) failed to cite plaintiff's neighbors who allegedly violated a noise ordinance; (4) failed to cite individuals who allegedly plowed snow onto plaintiff's property; (5) failed to cite vehicles that allegedly trespassed onto plaintiff's property; (6) failed to give plaintiff an accurate statement of property taxes owed; (7) ignored the fact that the property at 1800 Rose Street was not code-compliant; and (8) approved his paint room and later reported him to the state of Wisconsin.

This case is before the court on defendants' motion for summary judgment. Defendants' motion will be granted as to all of plaintiff's claims because plaintiff has failed to show that he was treated differently from others similarly situated.

In determining the material and undisputed facts, I have disregarded those proposed findings of fact and responses that constituted legal conclusions, were argumentive or irrelevant, were not supported by the cited evidence or were not supported by citations specific enough to alert the court to the source for the proposal. In particular, I disregarded plaintiff's proposed findings of fact regarding certain businesses or individuals not being cited for alleged ordinance violations when the proposed finding was supported solely by plaintiff's own affidavit. In each of these instances, plaintiff failed to adduce admissible evidence, such as an affidavit from the business or individual, or a copy of records from the

relevant city agency, in support of his proposed fact. See, e.g., Plt.'s PFOF, dkt. #18, ¶¶ 54, 70, 73, 74. The Court of Appeals for the Seventh Circuit has repeatedly held that "self-serving affidavits without factual support in the record will not defeat a motion for summary judgment." Albiero v. City of Kankakee, 246 F.3d 927, 933 (7th Cir. 2001) (quoting Slowiak v. Land O'Lakes, Inc., 987 F.2d 1293, 1295 (7th Cir. 1993); Drake v. Minnesota Mining & Mfg. Co., 134 F.3d 878, 887 (7th Cir. 1998) ("Rule 56 demands something more specific than the bald assertion of the general truth of a particular matter; rather it requires affidavits that cite specific concrete facts establishing the existence of the truth of the matter asserted.")). Also, I disregarded plaintiff's proposed finding of fact ¶ 72 because the evidence cited in support was hearsay and plaintiff's proposed finding of fact ¶ 57 because it was unsupported by evidence and squarely contradicted by admissible evidence introduced by defendants. Finally, in their response to plaintiff's proposed findings of fact, defendants objected to several proposed facts on the ground that plaintiff cited to the wrong paragraph in an affidavit. I ignored defendants' objection where it was clear that plaintiff was merely careless in citing to the wrong paragraph number and the relevant information was supported by another paragraph in the affidavit. See, e.g., Dfts.' Resp. Plt's PFOF, dkt. #29, ¶ 34, 40, 72.

From the parties' proposed findings of fact and the record, I find the following to be material and undisputed.

UNDISPUTED FACTS

A. Parties

Plaintiff John G. Reget is an adult resident of La Crescent, Minnesota. Defendant City of La Crosse is a municipality in the state of Wisconsin. Defendant John Medinger is an adult resident of La Crosse County, Wisconsin and the former mayor of La Crosse. Defendant Larry Kirch is an adult resident of La Crosse County and an employee of the city of La Crosse. Defendant Ron Olsen is an adult resident of La Crosse County and an employee of the city of La Crosse. Defendant Patrick Houlihan is an adult resident of La Crosse County and City Attorney for the city of La Crosse. Defendant Pat Cafferty is an adult resident of La Crosse County and is a former employee of the city of La Crosse.

B. Relocation of Johns Autobody

Plaintiff John Reget is the owner of Johns Autobody. From 1975 to 1980, plaintiff operated his business at 216 Pearl Street, La Crosse. In 1980, plaintiff had to move Johns Autobody out of the Pearl Street location to 1800 Rose Street because of a city project known as the "Parking Ramp Project." Plaintiff was fully compensated for the move to the Rose Street location.

The property at 1800 Rose Street was not comparable to the property at 216 Pearl Street. It was not in compliance with building codes because it lacked amenities such as

explosion proof lighting and wiring and a ventilation system for hazardous fumes. Defendant La Crosse paid plaintiff a sum of money to remodel the building at 1800 Rose Street to make it comparable to the building on Pearl Street. When plaintiff told defendant La Crosse that the payment was not sufficient to make the new property comparable to the old property and to bring the Rose Street property into compliance with building codes, plaintiff was told he would have to make do with the sum of money he had been paid.

Plaintiff signed a release that stated:

> John Reget . . . does hereby waive any and all claims he or his business may now or hereinafter have under the provisions of Chapter 32 of the Wisconsin Statutes for any compensation or cost over and above the amount of $43,605.62 which he has received in the form of a Business Replacement Payment and $1,468.94 which he has received for moving and search expenses related to his relocation from 216 Pearl Street.

C. Property Inspection

When plaintiff moved Johns Autobody to 1800 Rose Street he built an addition to the building, which he used as a paint room. Defendant La Crosse inspected the paint room after it was built and did not find any violations. No one employed by defendant La Crosse told plaintiff that the paint room needed approval by the state of Wisconsin. Given the actions of defendant La Crosse, plaintiff believed that the paint room complied with all code requirements and was suitable and safe to operate.

Ken's Auto Repair built a paint room on its property in 1969 and submitted the

construction plans to the state of Wisconsin. Defendant La Crosse did not have the authority to approve the paint room at Ken's Auto Repair after it was built.

Some time in 2004, the La Crosse Fire Department asked John R. Anderson, District 2 Fire Protection Coordinator for the state of Wisconsin, to conduct an inspection of plaintiff's property at 1800 Rose Street. Anderson inspected the property and found code violations. On December 8, 2004, Anderson issued plaintiff a Fire Prevention Order, informing him that his property at 1800 Rose Street was in violation of Wisconsin Administrative Code Comm. 14/NFPA 1. As of August 25, 2005, plaintiff had not corrected all of the code violations noted by Anderson. Plaintiff has never received a citation from the City of La Crosse Fire Department.

D. Zoning

When plaintiff purchased the property at 1800 Rose Street in 1980 it was zoned as "heavy industrial." Some time in 1995 or 1996, defendants engaged in a comprehensive rezoning of the north side of La Crosse and attempted to rezone plaintiff's property to "commercial district zoning." Over 100 properties were rezoned. Plaintiff did not want his property to be rezoned to "commercial district zoning" because that would have put him out of business, given the nature of the activities conducted at Johns Autobody. Plaintiff and his attorney attended meetings of the La Crosse Common Council to object to the rezoning

plan. To avoid the rezoning of his property, plaintiff entered into an agreement with defendant La Crosse in January 1997. Plaintiff's property continues to be zoned as "heavy industrial."

In the January 1997 agreement between plaintiff and defendant La Crosse, plaintiff agreed to install an opaque fence on part of his property (the east and north sides of 700 Ghores Street). Defendant La Crosse required plaintiff to build the fence in order to restrict the view of the body shop storage area from residential areas. Also, plaintiff agreed to abide by the La Crosse noise ordinance between the hours of 11 p.m. and 7 a.m. Plaintiff had to shorten his business hours in order to comply with the noise ordinance. In the agreement, defendant La Crosse agreed to "enforce all violation of ordinances relating to neighbors of 1800 Rose Street/700 Gohres Street, La Crosse Wisconsin and to John Reget."

E. Property Taxes

Plaintiff stopped paying property taxes in the mid to late 1980s. Defendant La Crosse obtained judgments against plaintiff for back taxes owed. Plaintiff is making monthly payments of back taxes to defendant La Crosse. Plaintiff does not know whether there is a procedure in the city of La Crosse for assessing property taxes.

In 1997, when plaintiff and defendant La Crosse were discussing the zoning agreement they were about to enter into, defendant La Crosse admitted that the amount of

property taxes it told plaintiff he owed was an estimate and that the city was responsible for telling plaintiff the exact amount he owed. Defendant La Crosse did not give plaintiff a statement reflecting the exact amount he owed in property taxes until after the commencement of the present lawsuit.

F. Snow Damage

Throughout the winter of 1997, employees of the Brookstone Inn, which is located at 1830 Rose Street, repeatedly plowed and deposited snow onto plaintiff's property line fence, damaging and bending the fence. Plaintiff contacted the La Crosse Inspection Department regarding the plowing and damage to his fence.

G. Trespassing

On April 1 and April 10, 1997, plaintiff discovered that vehicles from the Brookstone Inn were trespassing onto his property. On both occasions, plaintiff called the La Crosse Police Department.

H. Noise

On December 3, 2002, plaintiff called the La Crosse Police Department and told Lieutenant Laurence that a semi truck was running its engine in the Brookstone Inn parking

lot in close proximity to plaintiff's business at an excessive noise level. A police officer took decibel level readings of the semi truck and found that the noise level was 70.5 decibels. On December 31, 2002, plaintiff contacted Lieutenant Laurence again and told him that the same semi truck was running its engine and was violating the noise ordinance.

On January 14, 2003, plaintiff contacted the La Crosse Police Department because a diesel truck was running in the Brookstone Inn parking lot at an excessive noise level. Since January 2003 plaintiff has made numerous complaints to the La Crosse Police Department regarding excessive noise all night at the Brookstone Inn because of trucks running their engines.

I. Storage Ordinance

In 1993, defendant La Crosse passed an ordinance governing the storage of junked automobiles. The ordinance requires that certain storage places be enclosed with opaque fencing. During the La Crosse meeting where this ordinance was passed, certain city officials nicknamed the ordinance "the Reget Resolution."

Defendant La Crosse cited plaintiff repeatedly for violating the storage ordinance between 1991 and 1994 (Plaintiff incorrectly believes the storage ordinance was passed in 1991. In fact it was passed in 1993. Dfts.' Resp. Plt's PFOF, dkt. #29, ¶ 37.) In February 1995, at the conclusion of a municipal court trial regarding one of plaintiff's citations for

violating the storage ordinance, plaintiff had a conversation with Doug Bilyeu, an employee in the city of La Crosse Inspection Department. Bilyeu stated that the issuance of citations against plaintiff for the storage of junked vehicles was a case of selective prosecution and that certain officials (who are defendants in this lawsuit) wanted plaintiff out of business.

Shifters Autobody is located in La Crosse. It stored junked vehicles on its property from approximately 1996 to 2000 but was not cited for violating the storage ordinance and was not required to build an opaque fence around the junked vehicles.

For the last forty years, Ken's Auto Repair has operated in La Crosse at 1716 Gillete Place. Throughout this time, junked vehicles have been stored on property belonging to Ken's Auto Repair. Ken's Auto Repair has been cited for violating the storage ordinance but has not been required by defendant La Crosse to build an opaque fence around the automobiles.

In an agreement between plaintiff and defendant La Crosse signed in a January 1997, plaintiff agreed to install an opaque fence on part of his property (the east and north sides of 700 Ghores Street) to restrict the view of the body shop storage area from residential areas.

In May 2003, plaintiff entered into a stipulation with defendant La Crosse that the city would install a fence on plaintiff's property at 700 Ghores Street and plaintiff would pay for the fence over a 15-year period.

OPINION

A. 'Class of One' Equal Protection Claim

The Equal Protection Clause of the Fourteenth Amendment provides that "no State shall . . . deny to any persons within its jurisdiction the equal protection of laws." U.S. Const. Amend. XIV, § 1. "In so providing, 'the Equal Protection Clause gives rise to a cause of action on behalf of a 'class of one' where the plaintiff did not allege membership in a class or group.'" Racine Charter One, Inc. v. Racine Unified School District, 424 F.3d 677, 680 (7th Cir. 2005) (quoting Village of Willowbrook v. Olech, 528 U.S. 562, 564 (2000)). "'Successful equal protection claims brought by a class of one' have been recognized 'where the plaintiff alleges that she has been intentionally treated differently from others similarly situated and that there is no rational basis for the difference in treatment.'" Id. (quoting Olech, 528 U.S. at 564). The Court of Appeals for the Seventh Circuit recognized in Racine that "the standard for such class of one claims has been muddled in this circuit by two divergent lines of cases." Racine Charter One, Inc., 424 F.3d at 680. One line of cases requires plaintiffs to show that there is no rational basis for the difference in treatment. Another line requires plaintiffs to show that defendants were driven by an illegitimate animus. Id. This divergence is immaterial to the present case because summary judgment for defendants will be granted on unrelated grounds.

The essence of an equal protection violation, even a class of one claim, is the existence

of *discrimination* of some sort. Olech, 528 U.S. at 564. In a class of one case, it is not sufficient for plaintiff to assert that government officials are harassing him. Rather, to prevail in a class of one case, the plaintiff must show that government officials singled him out from among similarly situated individuals for disparate treatment. A class of one claim fails "where the plaintiff has 'failed to identify someone who is similarly situated but intentionally treated differently than he.'" Lunini v. Grayeb, 395 F.3d 761, 769-770 (7th Cir. 2005) (quoting McDonald v. Village of Winnetka, 371 F.3d, 992, 1002 (7th Cir. 2004)). "Of course the law must provide some remedy for extreme abuses of power by public officials. However, absent some comparative showing of discrimination among similarly situated individuals or classes of individuals, such a remedy cannot be obtained via the *Equal Protection Clause*." Lunini, 395 F.3d at 770.

B. Qualified Immunity

Defendants argue that they are entitled to qualified immunity with respect to plaintiff's claim that they violated his rights under the equal protection clause. The doctrine of qualified immunity provides that "governmental officials performing discretionary functions generally are shielded from liability for civil damages insofar as their conduct does not violate *clearly established* statutory or constitutional rights of which a reasonable person would have known." Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982).

The first question in the qualified immunity analysis is "whether the conduct, as alleged, violates a constitutional or statutory right in the first place." Id. at 769 (citing Saucier v. Katz, 533 U.S. 194, 200-01 (2001)). To answer this question, the court examines the full record before it; where, as here, the record has been developed for summary judgment, the court does not look only to the pleadings. Levenstein v. Salafsky, 414 F.3d 767, 772 (7th Cir. 2005) (citing Behrens v. Pelletier, 516 U.S. 299, 307 (1996)). If the court finds that the plaintiff has made out a viable constitutional claim, it proceeds to the second question in the qualified immunity analysis, which is "whether the right in question was 'clearly established' at the time of the alleged misconduct." Lunini, 395 F.3d at 769 (citing Saucier, 533 U.S. at 200-01).

Plaintiff contends that defendants violated his right to equal protection in eight different ways. I will examine each of plaintiff's eight allegations to determine whether the alleged conduct violates plaintiff's equal protection rights. If any of the allegations survive this first step in the qualified immunity analysis, I will then examine whether the right in question was 'clearly established' at the time of the alleged misconduct.

1. Relocation to 1800 Rose Street

Plaintiff contends that when he told defendants that the amount of money they paid him to move to 1800 Rose Street was not sufficient to make the new building comparable

to his old building and to render the new building code compliant, defendants told him he would have to "make do" with the amount of money they had paid him. This contention does not raise an equal protection claim because, as a preliminary matter, plaintiff has not alleged that defendants gave differential treatment to similarly situated individuals whose property defendants seized through eminent domain.

2. Property taxes

Plaintiff stopped paying property taxes in the 1980s and defendant La Crosse obtained judgments against him for back taxes owed. In 1997, defendant La Crosse told plaintiff that the dollar amount it had quoted him was an estimate of how much he owed and admitted that it needed to tell plaintiff the exact amount he owed. It was not until the commencement of the present lawsuit that defendant La Crosse gave plaintiff a statement reflecting the exact amount of money he owes in unpaid property taxes.

Plaintiff contends that defendant La Crosse is "arbitrarily assessing plaintiff for personal property tax without justification and without utilizing the procedure in place to view and assess plaintiff's personal property, and by doing it arbitrarily and capriciously." Plt.'s Am. Cpt., dkt. #3, ¶ 407E. Plaintiff's allegation does not amount to an equal protection claim because he has not alleged that similarly situated individuals were treated differently from him with regard to their unpaid taxes.

3. Property inspection

When plaintiff moved his business to 1800 Rose Street, he built an addition to the property, which he uses as a paint room. In the early 1980s, when plaintiff built the addition, defendant La Crosse inspected it and did not find any violations. However, in 2004, the La Crosse Fire Department asked the state of Wisconsin to conduct an inspection of plaintiff's property. The state inspector found code violations and issued plaintiff a Fire Prevention Order.

Plaintiff contends that defendants instigated the 2004 property inspection by the state "as part of their overall policy of harassment and discrimination against this Plaintiff." Plt.'s Am. Cpt., dkt. #3, ¶ 404. This fails to state an equal protection claim because plaintiff has not suggested that he was treated differently from others similarly situated. The fact that Ken's Auto Repair built a paint room adjacent to its business in 1969 and submitted the plans to the state of Wisconsin has no bearing on plaintiff's attempt to establish an equal protection claim because plaintiff has not suggested that defendants treated Ken's Auto Repair differently from plaintiff.

4. Rezoning

Some time in 1995 or 1996, defendant La Crosse engaged in a comprehensive rezoning of the north side of the city, in which over 100 properties were rezoned.

Defendants wanted to rezone plaintiff's property at 1800 Rose Street. To avoid rezoning, plaintiff entered into a written agreement with defendant La Crosse in January 1997. Plaintiff agreed that he would install a fence in his property and would abide by the city noise ordinance. In order to abide by the noise ordinance, plaintiff had to shorten his business hours. Plaintiff's property continues to be zoned "heavy industrial," as it was when he purchased the property in 1980.

Plaintiff's contention that his right to equal protection was violated because his property was singled out for rezoning finds absolutely no support in the record. On the contrary, the facts reveal that the city rezoned over 100 properties. In his brief, plaintiff argues that "when [he] entered into an Agreement with the defendants to keep his property from being rezoned, certain requirements were imposed on him that have not been imposed on any other similarly situated businesses." Plt.'s Br., dkt. #17, at 6. Despite plaintiff's sweeping assertion in his brief, he did not allege any facts suggesting that he received less desirable treatment than similarly situated property owners, that is, those whose properties were also subjected to defendant La Crosse's rezoning project but were able to avoid rezoning by striking a deal with the city. Plaintiff has not shown that defendants' conduct with respect to rezoning violated his equal protection rights.

5. Storage ordinance

In 1993, defendant La Crosse passed an ordinance governing the storage of junked automobiles. The ordinance required that certain storage places be enclosed with opaque fencing. Plaintiff contends that defendants enforced the ordinance against him but not against other auto body businesses in La Crosse. Plaintiff's claim amounts to a claim of selective prosecution, that is, that he was singled out for punishment when others were allowed to continue violating the law.

Selective prosecution violates the equal protection clause "'where the decision to prosecute is made either in retaliation for the exercise of a constitutional right, such as the right to free speech or to the free exercise of religion' [or] 'where the power of government is brought to bear on a harmless individual merely because a powerful state or local official harbors a malignant animosity toward him.'" Levenstein v. Salafsky, 164 F.3d 345, 352 (7th Cir. 1998) (quoting Esmail v. Macrane, 53 F.3d 176, 179 (7th Cir. 1995)). As with all equal protection claims, the foundation of a selective prosecution claim is that the plaintiff was treated differently from others who are similarly situated.

Plaintiff contends first that he was cited multiple times prior to 1994 for violating the storage ordinance but that numerous other auto body shops that stored junked vehicles were not cited. Plaintiff's argument fails because he failed to identify someone similarly situated but treated differently. Plaintiff speculates, without introducing any admissible evidence,

that defendant La Crosse failed to cite numerous violators of the ordinance. Plaintiff introduced admissible evidence only with respect to Shifters Autobody. Shifters Autobody, also located in La Crosse, stored junked vehicles on its property from approximately 1996 to 2000 and was not cited for violating the storage ordinance. However, Shifters Autobody is not an adequate comparator. Parties are similarly situated in the context of an equal protection claim only when they are "identical [ ] in all relevant respects." Levenstein, 414 F.3d at 776 (citing Grayson v. O'Neill, 308 F.3d 808, 819 (7th Cir. 2002)). Plaintiff's complaint is that he was repeatedly cited for violating the ordinance prior to 1994. Accordingly, to sustain an equal protection claim, plaintiff needed to compare himself to similarly situated businesses that were not cited during the same time period. The fact that Shifters Autobody was not cited during the years 1996 through 2000 has no bearing on plaintiff's claim that prior to 1994, defendants selectively enforced the storage ordinance against him. Moreover, plaintiff has not shown that Shifters Autobody was similarly situated to Johns Autobody because plaintiff did not allege facts to suggest that Shifters Autobody was actually violating the storage ordinance. The facts in the record show that the storage ordinance requires that *certain storage places* be enclosed with fencing. For Shifters Autobody to qualify as an adequate comparator, plaintiff would need to establish that it stored junked vehicles in a manner that subjected it to the ordinance.

Plaintiff argues next that defendant La Crosse not only cited him for violating the

storage ordinance; it also required him to build a fence around his junked vehicles, but did not require similarly situated businesses to build a fence. In 1997, in order to avoid the rezoning of his property, plaintiff had to agree to install an opaque fence around part of his property (the east and north sides of 700 Ghores Street) to restrict the view of the body shop from residential areas. Presumably, plaintiff failed to install the fence, because in May 2003 plaintiff entered into a stipulation with defendant La Crosse whereby the City would install the fence on plaintiff's property (at 700 Ghores Street) and plaintiff would pay for the fence over a 15-year period.

Plaintiff's equal protection claim fails because he did not show that he was treated differently from others who are similarly situated to him. Plaintiff introduced evidence concerning Shifters Autobody and Ken's Auto Repair. Although Shifters Autobody was not required to build a fence, plaintiff did not establish that Shifters Autobody was in fact violating the ordinance. Ken's Auto Repair has operated its autobody business in La Crosse for the last forty years, and throughout this time it has stored junked vehicles on its property. Although Ken's Auto Repair has been cited for violating the storage ordinance, defendant La Crosse has not required it to build a fence. Ken's Auto Repair is not a suitable comparator for plaintiff's business because there are no facts indicating that Ken's junked vehicles were visible from neighboring residential areas. Defendant La Crosse required plaintiff to build a fence around his storage area on the east and north sides of 700 Ghores

Street in 1997 so as to restrict the view of the storage from residential areas. In 2003, defendant La Crosse again required plaintiff to build a fence in the same location. For Johns Autobody and Ken's Auto Repair to be similarly situated, plaintiff would need to establish that their storage areas posed the same problem, that is, they were both exposed to residential areas. The Court of Appeals for the Seventh Circuit has stated that "a meaningful application of the 'similarly situated' requirement is important to avoiding a distortion of the scope of protection in 'class of one' equal protection claims." McDonald v. Village of Winnetka, 371 F.3d 992, 1009 (7th Cir. 2004). Although the court of appeals "is cognizant of the fact that, as a general matter, whether individuals are similarly situated is a factual questions for the jury," in cases "where it is clear that no reasonable jury could find that the similarly situated requirement has been met, a grant of summary judgment is appropriate." Lunini, 395 F.3d at 770 (quoting Harlen Associates v. Village of Mineola, 273 F.3d 494, 499 n.2 (2d Cir. 2001)). Even though plaintiff introduced evidence suggesting that local officials harbored "a malignant animosity toward him," plaintiff's claim of selective enforcement of the storage ordinance must fail because he did not introduce any admissible evidence showing that he was treated differently than others who are similarly situated to him.

6. Trespassing vehicles

On two occasions in 1997 plaintiff called the La Crosse Police Department to complain that vehicles from the Brookstone Inn were trespassing onto his property. Plaintiff speculates, without introducing any evidence, that police officers issued tickets for these violations but then voided the tickets and did not enforce them. Even if plaintiff had submitted admissible evidence to show that the police had cited the alleged offenders and then voided the tickets, plaintiff still would not have stated an equal protection claim.

To state an equal protection claim plaintiff needed to allege, for starters, either that (1) the police ticketed him for trespassing but did not ticket similarly situated individuals for trespassing ("selective prosecution), or (2) the police protected other property owners by ticketing those who trespassed onto their property, but failed to protect plaintiff by not ticketing those who trespassed onto plaintiff's property (withdrawal of police protection). Plaintiff did not allege that he was treated differently from others similarly situated and therefore he failed to state an equal protection claim.

7. Snow damage

Throughout the winter of 1997, employees at the Brookstone Inn repeatedly plowed and deposited snow on plaintiff's property line fence, bending and damaging the fence. Plaintiff contacted the City Inspection Department regarding the snow plowing and the

damage to his fence. Again, plaintiff speculates that defendant La Crosse failed to ticket the alleged violators but he does not introduce any evidence to support his speculation. Even if he had, he would not have stated an equal protection claim.

As explained with respect to plaintiff's allegation concerning trespassing vehicles, to state an equal protection claim, at a minimum, plaintiff needed to allege either that (1) defendant La Crosse ticketed him for plowing snow onto others' property but did not ticket other individuals for plowing snow onto others' property; or (2) defendant La Crosse protected other property owners by ticketing those who plowed snow onto their property, but failed to protect plaintiff by not ticketing those who plowed snow onto his property. Plaintiff failed to allege that either of these things occurred and therefore he failed to raise an equal protection claim.

8. Noise

On multiple occasions in December 2002 and throughout 2003 plaintiff complained to the La Crosse Police Department about trucks running at excessive noise levels next door to his property. Plaintiff avers in conclusory fashion that on each occasion the trucks were violating the noise ordinance but the police did not ticket them. Plaintiff contends that defendants "failed to uniformly enforce noise ordinances in the City, despite repeated complaints by the plaintiff." Plt.'s Br., dkt. #17, at 5. Even if plaintiff had submitted

admissible evidence to show that defendant La Crosse failed to enforce the noise ordinance against the alleged violators, he would not have stated an equal protection claim. Plaintiff attempts to satisfy the "similarly situated" requirement by arguing that although defendant La Crosse failed to ticket the alleged violators of the noise ordinance in 2002 and 2003, it effectively forced him to enter into an agreement (a 1997 agreement to avoid rezoning) to abide by the noise ordinance. These facts do not satisfy the "similarly situated" requirement. Plaintiff needed to show not that he was forced to agree to obey the noise ordinance, but rather that he failed to obey the noise ordinance and was ticketed, whereas others who failed to obey the noise ordinance went unpunished. Because plaintiff has not made this showing, he has not shown that defendants' alleged conduct violated his equal protection rights.

None of plaintiff's eight allegations constitute equal protection violations and therefore summary judgment for the defendants is warranted. Although I reach this conclusion in the course of considering whether defendants are entitled to qualified immunity, which applies only to requests for monetary relief, the conclusion that plaintiff has not shown an equal protection violation means that he cannot recover any form of relief, monetary, injunctive or declaratory.

ORDER

IT IS ORDERED that the motion for summary judgment filed by defendants City of La Crosse, John Medinger, Larry Kirch, Ron Olsten, Patrick Houlihan, Pat Cafferty and Cities & Villages Mutual Insurance Company is GRANTED.

The clerk of court is directed to enter judgment for defendants and close this case.

Entered this 31st day of January, 2006.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge