

Bond Case Briefs

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PERMITS - ALASKA

Rosauer v. Manos

Supreme Court of Alaska - March 8, 2019 - P.3d - 2019 WL 1087294

After homeowners had trees removed from a municipal right-of-way across the road from their home, only obtaining a required permit several months later, neighbors, whose property abutted the right-of-way and whose house had been behind the removed trees, sued homeowners and tree-removal company for damages.

The Superior Court granted summary judgment to homeowners and the tree-removal company, and neighbors appealed.

The Supreme Court of Alaska held that retroactive permit was validly granted and, thus, conferred lawful authority for tree removal, and thus, neighbors could not establish claim under timber-trespass statute.

It was not unreasonable to interpret city's municipal code provision, authorizing waiver of permit terms and conditions, to include waiver of the prior-authorization requirement.

Department of Development Services' decision to grant homeowners a retroactive permit, to remove trees from a municipal right-of-way across the road from their home, would be reviewed for reasonableness; city's municipal code delegated significant authority and discretion over public-use permits to the Department, code broadly entrusted decisions regarding safe and efficient use of public spaces to Department, and authority to grant retroactive permits, with terms and conditions necessary to protect public interest, was consistent with such a policy.

Retroactive permit, to remove trees from municipal right-of-way across road from homeowners' home, was validly granted and, thus, conferred lawful authority for tree removal, and thus, neighbors, whose property abutted right-of-way and whose house had been behind the removed trees, could not establish claim under timber-trespass statute, which required that removal be without lawful authority; city's municipal code delegated significant authority and discretion over public-use permits to the Department of Development Services, code broadly entrusted decisions regarding safe and efficient use of public spaces to Department, and authority to grant retroactive permits, with terms and conditions necessary to protect public interest, was consistent with such a policy.