

Bond Case Briefs

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Town of Gorham v. Duchaine

Supreme Judicial Court of Maine - January 21, 2020 - A.3d - 2020 WL 284098 - 2020 ME 7

Town brought land-use-enforcement action against landowner, alleging multiple violations of town's land use and development code. Parties settled dispute by agreeing to terms set forth in consent decree, which included compliance plan, and the Portland District Court entered consent decree as judgment.

Town thereafter moved to enforce consent decree, alleging that landowner had failed to comply with plan and was liable for full \$10,000 suspended penalty, \$45,000 in per-day penalties, and town's costs of enforcement. The District Court, Jed J. French, J., granted motion. Landowner appealed.

The Supreme Judicial Court held that trial court's conclusion that landowner was noncompliant with consent decree, thereby triggering imposition of prospective penalties described in decree, was not supported by competent evidence.

Trial court's conclusion that landowner was noncompliant with consent decree between landowner and town concerning land-use violations, thereby triggering imposition of prospective penalties described in decree, was not supported by competent evidence, although town attached affidavits of its engineer and code enforcement officer to its motion to enforce decree, and rule concerning taking of testimony allowed trial court to hear matter on affidavits, where trial court did not hold hearing, did not inform parties it would decide motion on affidavits, and did not give landowner opportunity to submit affidavits in opposition to town's affidavits, and, further, simply attaching documents to motion was not equivalent of properly introducing or admitting them as evidence.