

Bond Case Briefs

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Andersen v. Town of Falmouth

Appeals Court of Massachusetts, Barnstable - February 26, 2015 - N.E.3d - 2015 WL 790013

Town residents sought an enforcement action by the town's building commissioner asserting that the town was in violation of a local zoning by-law by operating a wind turbine without a special permit. The building commissioner denied their request and residents appealed to the ZBA, which affirmed the building commissioner. The Superior Court affirmed the decision of the ZBA and the residents appealed.

At trial, the residents argued that the building commissioner and the ZBA incorrectly interpreted the Town zoning by-law to allow the issuance of a building permit for a wind turbine without a special permit. The judge, however, deferred to the opinion of the building commissioner, affirmed by the ZBA, that the by-law did not apply in the limited circumstance where the Town itself desired to construct and operate a windmill for municipal purposes in a district where all such purposes are permitted as of right.

The Appeals Court reversed, holding that the Town was not exempt from the by-law and was thus obligated to obtain a special permit.