

Bond Case Briefs

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DEVELOPER IMPACT FEES - NEW HAMPSHIRE

Town of Londonderry, v. Mesiti Development, Inc.

Supreme Court of New Hampshire - December 4, 2015 - A.3d - 2015 WL 7816131

Town filed bill of interpleader to determine whether surplus impact fees collected under impact fee ordinance should be refunded to developers who had paid the fees or to the current owners of properties for which the fees had been paid.

Developers filed counterclaims alleging violation of impact fee statute, negligence, and violation of fiduciary duties owed to impact fee payors. The Superior Court dismissed counterclaims. Developers appealed.

The Supreme Court of New Hampshire held that:

- Developers lacked standing to seek refund of legally assessed, but unspent or unencumbered fees;
- Town was not escrow agent to hold impact fees for benefit of payors and owed no fiduciary duties to developers; and
- Town owed no duty to developers in administering its impact fee ordinance and supervising its employees.

Real estate developers lacked standing to seek refund of legally assessed, but unspent or unencumbered impact fees from town, where they no longer owned the properties.

Statute governing unspent impact fees paid by real estate developers did not designate town as escrow agent to hold impact fees for benefit of fee payors and did not impose upon town fiduciary duties owed to developers. Statute did not require town to hold collected impact fees for benefit of original payors and return them to the payors if unspent, but could be satisfied by paying the funds to current property owners.

Town owed no duty to real estate developers in administering its impact fee ordinance and supervising its employees, and, thus, developers had no claim against town for negligently shifting disproportionate share of new capital facility costs to new development, failing to meet express requirements of rational nexus, proportionality, and special benefit to fee payer, and negligently supervising employees, even if town violated impact fee statute. Developers established no tort or other wrongful act committed by town employees.