

Bond Case Briefs

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Town of Mount Vernon v. Landherr

Supreme Judicial Court of Maine - July 24, 2018 - A.3d - 2018 WL 3543368 - 2018 ME 105

Town filed land use violation and complaint against landowners, seeking a permanent injunction and an order for removal of a generator that was installed without a permit in violation of land use ordinance.

Following a bench trial, the District Court found landowners in violation of the ordinance, and assessed a penalty and attorney fees. Landowners appealed.

The Supreme Judicial Court of Maine held that issue preclusion made binding decision of the town board of appeals affirming the town's code enforcement officer's determination that landowners' generator was a structure.

In action by town against landowners, in which town sought a permanent injunction and an order for removal of a generator that had been installed without a permit, issue preclusion applied to make decision of the town board of appeals affirming the town's code enforcement officer's determination that landowners' generator was a structure that was required to meet the requirements of town's land use ordinance binding on landowners; landowners had a fair opportunity to litigate the issue before the board of appeals, assertively advocating for their position that the generator was not a structure that required a permit, after the board issued its decision, it became a valid final judgment when landowners let the appeal period pass without filing an appeal, and the issue, whether the generator was a structure, was the same in both proceedings.