

# **Bond Case Briefs**

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## **ZONING & PLANNING - NORTH CAROLINA**

### **Town of Midland v. Harrell**

**Court of Appeals of North Carolina - March 15, 2022 - S.E.2d - 2022-NCCOA-167 - 2022 WL 775040**

Town filed action against developers, seeking order of abatement, a permanent mandatory injunction, and collection of civil penalties, costs, and attorney's fees after developers failed to maintain subdivision roads.

Town and developers filed cross-motions for summary judgment. The Superior Court granted summary judgment in favor of town, and denied developers' motion for relief from judgment. Developers appealed.

The Court of Appeals held that:

- Town had standing to pursue action against developers;
- Developers failed to establish they had a right to appeal civil penalties imposed;
- Remand of trial court's permanent injunction and abatement order was required; and
- Developers were entitled to an award of attorney's fees.

Town had standing to pursue action against developers after they allegedly failed to maintain subdivision roads as part of their development project, where town sought to exercise its powers granted to it under state law to seek fines, a mandatory injunction, and an order of abatement against developers, town also sought to exercise its power to enforce its own zoning ordinances, and based on town's own ordinances, town council was not required to adopt a resolution to authorize town to file its complaint against developers.

Civil penalties imposed by zoning administrator did not constitute a "final and binding order, requirement or determination made in writing" under statute governing quasi-judicial zoning decisions, and thus, developers did not establish that they had right to appeal them, where civil penalties imposed simply enforced judgment that found developers committed zoning violations, which they previously and unsuccessfully appealed town's zoning and subdivision administrator's issuance of notice of violation, and pursuant to town's ordinances, there was no other avenue available to challenge enforcement of that judgment in form of civil penalties.

Remand of trial court's mandatory permanent injunction and order of abatement was required for trial court to make further findings of fact of whether developers failed to meet specific Department of Transportation (DOT) standards and what was required for compliance after developers allegedly failed to maintain subdivision roads, where trial court failed to resolve dispute between town and developers as to exactly how to bring development roads into compliance with DOT standards, and as written, developers could not know from terms of trial court's injunction and abatement order what they had to do to bring roads into compliance.

Developers were entitled to award of attorney's fees for fees incurred contesting over 200 civil penalties assessed against them during pendency of earlier appeal of their lawsuit against town

board of adjustment after its zoning and subdivision administrator issued a notice of violation for developers' alleged failure to maintain subdivision roads, where town was not authorized to impose penalties while developers' first lawsuit was on appeal, and attorney's fees statute provided that fees would be awarded when a city violated a state or case law setting forth unambiguous limits on its authority.