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Court Update

TOWN OF LONDONDERRY V. MESITI DEVELOPMENT

Towns do not Assume Fiduciary Obligations or Tort Liability Under the Impact Fee Statute

New Hampshire Supreme Court No. 2014-0291, 12/4/2015

As a complement to the NH Supreme Court's ruling in *K.L.N. Construction v. Town of Pelham*, 167 N.H. 180 (2014), the Court determined that the Town of Londonderry did not have fiduciary responsibility or tort liability under the Impact Fee Statute.

Londonderry had determined that \$264,517.02 in collected impact fees had to be refunded and the Town sought Superior Court guidance on whether the fees should be returned to the developers who paid the fees or to the current owners of the properties for which the fees had been paid. The Town employed the legal procedure called an interpleader petition whereby a party holding property sought by competing parties may seek the court's judgment on the proper distribution. Among the many counter-claims made by the developers against that Town as part of that proceeding, it was argued that the Town had either breached a fiduciary obligation to the fee payors or was negligent per se in the administration of the collected impact fees.

As to the claim of a breach of a fiduciary duty, the Court ruled that the Impact Fee Statute, RSA 674:21 (V), does not designate the Town as an escrow agent to hold collected impact fees for the benefit of fee payors and therefore does not impose fiduciary duties upon the Town. Concerning the argument by the fee payors that the Town's maladministration of the collected impact fees amounted to negligence per se allowing the fee payors to recover damages, the Court found no articulated common law duty of care. The Court reiterated that municipalities do not assume a duty of care merely by virtue of having enacted regulations, citing to *Stillwater Condo. Assoc. v. Town of Salem*, 140 NH 505 (1995). Similarly, the Court found that the fee payors failed to articulate any form of a common law duty of care owed by the Town of Londonderry such that the alleged mismanagement of the collected impact fees entitled them to recover money damages.

Click Here to View Court Decision. (<http://www.nhmunicipal.org/Resources/ViewDocument/590>)

Practice Pointer: As a complement to the NH Supreme Court's ruling in K.L.N. Construction v. Town of Pelham, 167 N.H. 180 (2014), municipalities need to recognize that creating and managing an impact fee system under RSA 674:21 (V) does not create fiduciary responsibilities or tort liability.

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