

Legal Alert

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Planning Board Must Undertake an “Individualized Consideration” and Make Specific Findings Prior to the Imposition of a Recreation Fee as a Condition of Site Plan Approval

May 13, 2011

In a recent Second Department decision, the Court held that the Planning Board's imposition of a recreation fee as a condition of site plan approval was invalid. In *Pulte Homes of New York v. Town of Carmel Planning Board*, 2011 WL 1733931 (2d Dep't 2011), the petitioner appealed the lower court's decision which dismissed the petition challenging the planning board's imposition of a recreation fee as a condition of site plan approval for a senior citizen housing development.

The Second Department reversed, holding that a planning board must make an individualized consideration prior to imposing the fee, as well as make specific findings as to the recreational needs created by the petitioner's improvements. The Court stated that while a planning board has the authority to impose a recreation fee as a condition of site plan approval, it must make specific findings prior to such imposition. In this case, the Court found that the recreation fee was invalid in that the Planning Board made no individualized consideration and failed to make specific findings as to recreational needs. The Court reversed the judgment and remitted the matter to the Planning Board to determine whether a recreational fee was appropriate and to make specific findings which would support such a fee.

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Second Department Prohibits Town Governments from Mandating Construction of Specific Types of Buildings

May 13, 2011

The Second Department recently held that a town or municipal government does not have the authority to enact a zoning ordinance which mandates the construction of a specific type of building.

In *Town of Huntington v. Beechwood Carmen Building Corp.*, 82 A.D.3d 1203, 920 N.Y.S.2d 198 (2d Dep't 2011), the developer sought to construct a community of single-family homes and a senior residential community on a 382-acre parcel of real property. The Town rezoned the parcel from "R-80," allowing only single-family dwellings, to "Residential Planned Unit Development," which would permit, among other uses, a swimming pool and a community center on a portion of the site. The developer instead decided that such portion would be used as a recreational facility, consisting of a playground, a tennis court, and a gazebo. The Town commenced an action against the developer, alleging that the Town Code mandated the construction of a swimming pool and community center.

The Court held that the Town could not mandate the construction of a swimming pool and community center. It reasoned that to do so would be outside the scope of the Town's authority as conferred by the enabling statutes in Town Law Article 16. While the Town has the authority to enact a zoning ordinance setting forth permitted uses, it cannot mandate a specific kind of building or amenity.

For questions concerning the Court's decisions, please contact Richard L. O'Rourke, Esq. or Jennifer L. Gray, Esq. at 914-946-4777. You can also reach Mr. O'Rourke and Ms. Gray by email at ro'rourke@kblaw.com or jgray@kblaw.com. We gratefully acknowledge the assistance of our legal intern, Penni Stathakos, in the research and drafting of this legal alert. Ms. Stathakos is a third year student at Pace Law School.

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Located in White Plains, NY, Keane & Beane, P.C. has provided the highest quality legal counsel to its clients - in the Hudson Valley and beyond - for over 30 years. Keane & Beane, P.C. offers the best of two worlds: The breadth and depth of professionals and practice areas usually found only at a large law firm, with the accessibility, personalized service and loyalty to clients of a smaller firm. Our Practice Areas are Business Transactions, Construction, Education, Elder Law, Environmental Law, Intellectual Property & Technology Law, Labor & Employment, Land Development & Zoning, Litigation, Municipal Law, Real Estate and Trusts & Estates.

Please visit www.kblaw.com and feel free to contact any of our attorneys. If you need immediate assistance, please contact our Office Manager Barbara Durkin at (914) 946-4777 or bdurkin@kblaw.com

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