

Court Grants Town's Motion to Dismiss in Abutters' Complaints about Opening of Dam

Kerri Lummus, et al. v. Town of Boxford, et al., Essex County Superior Court, C.A. No. 16-01902 (June 7, 2017)

The Essex Superior Court recently granted a Motion to Dismiss in favor of the Town of Boxford in a matter involving the abutters of a privately-owned dam. The plaintiffs alleged that the owner of the dam's unlawful conduct in opening the dam caused their wells to fail.

Seeking declaratory judgment, the plaintiffs asked the Court to make certain declarations related to compliance with the Town of Boxford Bylaws, permitting and enforcement actions. PDP Attorney Adam Simms filed a Motion to Dismiss on behalf of the Town. Mr. Simms argued that there was no live controversy related to the complaint and that administrative remedies were available to the plaintiffs.

No Actual Controversy

The Court agreed stating, "There is no live, actual controversy with respect to the declarations the plaintiffs seek against the Town in Count I, which all relate to past conduct and completed acts. The plaintiffs' opposition to the Town's motion characterizes what they seek in Count I as 'an adjudication of whether or not a permit issued in 2010 for specific work is applicable to different work that was performed in 2016' and 'whether an after-the-fact Order of Conditions issued in 2010 covers other work performed over six years later.'"

Administrative Remedies Must be Exhausted First

Additionally, the Court said, "To the extent the plaintiffs argue that an actual controversy exists regarding the Town's involvement with the oversight of the Dam...the plaintiffs must exhaust their administrative remedies before seeking relief from this court."