

NEW HERITAGE BUILDERS, INC.

v.

TOWN OF OLD ORCHARD BEACH

Submitted on Briefs July 9, 2004

Decided August 6, 2004

Panel: SAUFLEY, C.J., and RUDMAN, DANA, ALEXANDER, CALKINS, and  
LEVY, JJ.

#### MEMORANDUM OF DECISION

New Heritage Builders, Inc. (NHB) appeals from a judgment entered in the Superior Court (York County, *Brennan, J.*) affirming a decision of the Town of Old Orchard Beach Zoning Board of Appeals.

NHB claims that the ZBA erred by declining to address NHB's argument that the Planning Board acted *ultra vires* in 1988 when it conditioned its subdivision approval on the payment of impact fees by the developer. Contrary to NHB's claim, the ZBA did not err because under the Town's ordinance, it does not have jurisdiction to review Planning Board decisions. Old Orchard Beach, Me.,

Subdivision Review Standards art. 14 (Feb. 18, 1986); Old Orchard Beach, Me., Zoning Ordinance § 14.3 (May 7, 2002) [hereinafter Ordinance]. Contrary to NHB's additional contentions, (1) comments by individual members of the ZBA do not constitute findings by the full Board and are not a basis for vacating the Board's decision; (2) the ZBA did not err when it concluded that the Code Enforcement Officer had the authority to refuse to issue certificates of occupancy and a new building permit until NHB paid outstanding impact fees because, under the Town's ordinance, certificates and permits should not issue if they will result in a violation of the ordinance, which includes the "failure to comply with any conditions imposed by the . . . Planning Board," Ordinance §§ 15.2, 15.4; and (3) the CEO's actions did not give rise to a waiver of the impact fee requirement because the CEO did not have the authority to waive conditions contained in the Planning Board's subdivision approval, *see* Ordinance §§ 15.1.1, 15.2.

The entry is:

Judgment affirmed.

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**Attorneys for plaintiff:**

David R. Ordway, Esq.  
Aaron P. Burns, Esq.  
Smith Elliott Smith & Garmey, P.A.  
P O Box 1179  
Saco, ME 04072

**Attorneys for defendant:**

Patrick J. Scully, Esq.  
Christopher L. Vaniotis, Esq.  
Bernstein, Shur, Sawyer & Nelson, P.A.  
P O Box 9729  
Portland, ME 04104-5029